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LAW AND POLITICS OF ADVISORY OPINIONS AT THE ICJ: THE ATTITUDES OF THE SOVIET UNION/RUSSIA AND THE U.S.

Master's Thesis

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INTRODUCTION

The peaceful settlement of disputes takes roots from the ancient period. Ancient Greece accomplished the first arbitrage around the world. Herodotus, Plutarch, Polybius, and others mentioned this fact in their works.[1] As D. J. Bederman said, it is still unbelievable that people in ancient Greece and Rome managed to practice arbitrage with their foes.[2] The more controversial topic is the existence of arbitrage in ancient Rome. The ideas of the scholars about this topic vary from each other.[3] S. Seferiades wrote in his article that ancient Rome's alliances were not acts of liberal actions. They were the compulsive agreements concluded between Rome and the conquered territories. Therefore, the essence of no judicial equilibrium between the parties excludes the comprehension of international law in ancient Rome.[4]

During the Middle Ages, the situation has not experienced drastic changes. However, O. V. Butkevich mentioned that gradually, the international society realized that they must substitute war with the pacific ways of dispute settlement. This awaking was the prominent factor of the emergence of international law.[5] Despite this, in the Middle Ages, rivals of the international law strained to prove the non-existence of the international judicial system. According to H. L. A. Hart, the absence of judicial organs, the courts without obligatory judgments, and centralized sanctions underlined the dubious nature of international law.[6] The doubtful attitude towards international justice lasted until the end of the XVIII century. As Ch. R. F. Amerasinghe wrote, the political shift rendered non-obedience to arbitral decisions. Thus, this process shadowed arbitrage as an effective way of settling disputes during and after the XVI century.[7] The beginning of the XIX century was the period of the official establishment of the international judicial system. During this time, three mainstream ideas emerged. The first idea talked about peace and the international court's role in peacekeeping. It underlined that the international court was the foremost source for war prevention. The second idea mentioned the importance of international administration. This concept emphasized the significance of supranational

[1] V. Tolstykh. Istoria mezhdunarodnogo pravosudia. Raz. II, cha. 2.1. Moskva, Mezhdunarodnie otnoshenia, 2014. p. 51.
[2] D. J. Bederman. International Law in Antiquity. Cambridge University Press, 2004. p. 8.
[3] V. Tolstykh. *Supra note* 1, p. 51.
[4] S. Seferiades. Principes generaux du droit international de la paix // Recueil Des Cours de l'Academie de la Haye. Vol. 34. 1930. p. 229-233.
[5] V. G. Butkevich, V. V. Micik, O. B. Zadorojnyi. Mijdanarodne pravo: Ocnovi teorii. K.: Libid, 2002. p. 232.
[6] H. L. A. Hart. The Concept of Law. Oxford, Oxford University Press, 1961. p. 152.
[7] Ch. R. F. Amerasinghe. International Arbitral Jurisdiction. Martinus Nijhoff Publishers, 2011. p. 5-6.

institutions. The third idea brought out the concept of law. The concept added court to *ubi societas ibi ius* principle that established the correlation and interdependence of the court and the law.[8]

International justice went through a historically overwhelmed path. Modern international justice passed four phases. The first period counts the XVIII and XIX centuries until 1919. Jay's Treaty[9] was the first agreement that adopted the institute of international justice. The U.S. and U.K. concluded a treaty on 19 November 1794. Jay's Treaty strained to settle ongoing issues between the U.K. and the U.S. since American independence. The international arbitration enhanced its reputation with the "Alabama" case. The parties to the mentioned case were the U.S. and U.K. The arbitration ruled that the U.K. would pay 15.5 million dollars in compensation to injured U.S. citizens. The final stage was the establishment of the Permanent Court of Arbitration in 1899. Although, as L.F.L. Oppenheim wrote, the creation of the Permanent Court of Arbitration in The Hague was a helpful decision, nevertheless, this institution lacked the main features of a real court.[10] The second phase encompasses the period from 1919 until 1945. The mentioned phase commenced after the completion of the First World War. The key moment of this phase was the creation of the Permanent Court of Justice. The creation of the PCIJ was foreseen in Article 14 of the Covenant of the League of Nations.[11] The court functioned from 1922 until 1940. During its existence, the court obtained 32 judgments and 27 advisory opinions. The third phase began in 1945, after the end of World War II, and continued until the early 1990s. At this stage, the International Court of Justice replaced the PCIJ. This phase also experienced the complications of the Cold War. Thus, this phenomenon had a considerable impact on the endeavor of the International Court of Justice. The third phase counts not only the establishment of ICJ. This period also gave rise to the world's first criminal tribunals and the courts of Human Rights. After the completion of the third phase emerged the fourth stage that lasts until today. During the mentioned period emerged the first regional, criminal, and hybrid courts. The hybrid court examples were the U.N.-based courts in Sierra Leone, Kosovo, Timor, etc. Moreover, already existed courts obtained new reforms. The

[8] V. Tolstykh. *Supra note* 1, Part II, chap. 2.4, p.102-103.
[9] John Jay's Treaty, 19 November 1794.
[10] L. Oppenheim. Mezhdunarodnoe pravo. T. II. Moskva, izdatelstvo innostrannoi literaturi, 1949. p. 79.
[11] The Covenant of the League of Nations. Paris Peace Conference, 28.06.1919, Effective 10.01.1920, Expired 20.04.1946, Art. 14.

emphasized events accelerated the number of contentious cases in those institutions. All of the events mentioned above have hugely influenced the international judicial system nowadays.[12]

The desire for the peaceful settlement of disputes prompted the international community to give such a powerful impetus to the judiciary.[13] As H. Kelsen wrote, the international conflict includes the possession of similar claims. A dispute exists when the party to the case files the complaint. At the same time, the defender refuses the claim on merits.[14] R. Kolb compared dispute to gangrene, which includes dread and peril. Moreover, he named irritation, argument, and difficulty as the three main components of a dispute.[15] Nevertheless, PCIJ adopted the most notable definition in the "Mavrommatis Palestine Concessions" case. The court asserted that a dispute means a difference in views on laws or facts. It is a contradiction and confrontation of arguments and interests between the parties.[16]

U.N. charter includes articles about the pacific settlement of disputes in the sixth chapter. The chapter consists of six articles, each of which deals with the methods and procedures for the peaceful settlement of disputes. In most articles, the Security Council plays a significant role in optimizing the situation juxtaposed to the General Assembly. Article 33(a) of the Charter counts the ways of the pacific settlement of disputes. According to this article, if the dispute is up to menace the international peace and security, parties are obliged to seek a solution in negotiations, conciliation, mediation, inquiry, arbitration, and judicial settlement or to opt the way of the resolution by their own.[17] The paper deals exclusively with issues of judicial settlement, carefully analyzing the means of dispute settlement and the International Court of Justice's role in these processes.

The International Court of Justice is the primary judicial organ of the United Nations. According to article 7 of the U.N. Charter,[18] ICJ is on the list of six essential organs of the organization. The chapter includes five articles about the functions and powers of the court. The

[12] V. Tolstykh. *Supra note* 8, p. 104-116.
[13] A. X. Abashidze, A. M. Solntsev, K. V. Ageichenko. Mirnoe razreshenie mezhdunarodnykh sporov. Gla. 2. Moskva, Rossiyskiy universitet druzhby narodov, 2011. p. 28.
[14] H. Kelsen. The Law of the United Nations. London, Stevens & Sons Ltd, 1951. p. 350.
[15] R. Kolb. International Court of Justice. Oxford, Hart Publishing, 2013. p. 1.
[16] The Mavrommatis Palestine Concessions (Greece v. Britain). PCIJ. Judgment of 30 August 1924. p. 11.
[17] United Nations Charter. San Francisco 1945. Art 33.
[18] Ibid, Art. 7.

ICJ is the successor to the PCIJ, as evidenced by Article 92 of the Charter.[19] The basis of the statute of the ICJ was the statute of the PCIJ.[20] As E. J. Arechaga wrote, the principal reason for founding the ICJ was its predominance over arbitration. The arbitration jurisdiction is ephemeral. After considering one specific case, the court dissolves. On the other hand, ICJ creates judicial traditions that render the development of the law. [21] Judge V. S.Vereshetin emphasized that the ICJ is the only international judicial organ with global and universal jurisdiction, in terms of geographic location, dispute resolution, and public law.[22]

During the ICJ's existence, the great powers have never appeared before the court as opposing parties. Although, the United States had often sought to involve the USSR in contentious cases, based on the principle of *forum prorogatum*. The U.S. continues to be ranked as the most represented country in the court with 22 contentious cases. The most egregious case involving the U.S. was "Nicaragua v. The United States,"[23] which the court ruled on 26 November 1984.[24] As V. Tolstykh wrote, ICJ is the only authoritative organ dealing with interpreting the written norms. Moreover, it establishes the customary law and tackles the problems of the norm collisions. Despite the court's dependence on the Member States, it has a reputation for being an independent and impartial body. Anyone can criticize court decisions for their incompleteness, ambiguity, and uncertainty, but not for the court's interest in the cases.[25]

Article 96 of the U.N. Charter mentions the court's auxiliary power to adopt advisory opinions. The presented paper also revolves around advisory opinions. And the written statements that the Member States submitted during the procedures. Meticulously, around the written statements of the Soviet Union/Russia and the U.S. The essence of the advisory opinion and its basis has always been a source of mistrust. The paper seeks to assess the nature of the advisory opinions based on written statements made by the great powers in individual cases. The paper will identify the states' attitude towards the advisory jurisdiction of the court. The research will

[19] Ibid, Art. 92.
[20] V. Tolstykh. Mezhdunarodnyie sudy ikh praktika. Chast. II, glava. 10. Moskva, Mezhdunarodnyie otnoshenia, 2015. p. 181.
[21] E. X. Arechaga. Sovremennoe mezhdunarodnoe pravo. Moskva, Progress, 1983. p. 222.
[22] V. S.Vereshetin. Mezhdunarodnyi sud OON. 2-e izd. Moskva, Norma, 2007. p. 421.
[23] Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America). ICJ. Judgment of 26 November 1984.
[24] V. Tolstykh. *Supra note* 21, p. 197.
[25] Ibid, p. 200.

emphasize the significance of the written statements and instances when the great powers' views and standpoints were similar and different. Moreover, the work will examine the reasons affecting the great powers' written communications. Finally, all this information will provide an assessment of the essence of the advisory function of the court.

The United States constitutional law adopted the understanding of a political question. According to the political question doctrine, the court is competent to hear cases on legal issues. The politically involved cases do not fall under the jurisdiction of the court. Anthony Aust vindicates the political question doctrine in his article. As he wrote, instead of advisory opinions, politically controversial cases should be dealt with by long-term negotiations.[26] The presented paper will expand to determine the nature of the advisory function of the court based on the great powers' written statements. Thus, the research revolves around the following questions: (i) what are the advisory opinions and states' written statements? (ii) what was the attitude of the great powers', Soviet Union/Russia and the U.S., towards the advisory function of the court? (iii) based on the example of two great powers', their attitudes and reactions, how can it be characterized the institute of ICJ's advisory opinions in international law? Do they serve more a legal or political function?

The paper chiefly deploys an analytical method of research endorsed by case-law studies, historical and comparative methods to address the questions posed above. The work comprehensively analyses the advisory opinions of the court and the great powers' written statements to the cases. The paper will examine the written statements in a way to determine the nature of the advisory function. The historical method of the research will define the transition period of the USSR. The time of the dissolution of the Soviet Union and Russia as the successor of the USSR. The comparative method will help to compare the written statements of the great powers with each other. This information will provide an overview of the nature of the advisory jurisdiction. Study of the relevant literature, the court cases, and scholarly opinions will endorse the methods of the research as mentioned above.

The research expands around the hypothesis that (i) advisory jurisdiction of the court is a political platform for the states; (ii) and it serves as a political function of the court. Eventually,

[26] A. Aust. Advisory Opinions. Oxford, Journal of International Dispute Settlement, Volume 1, Issue 1, 2010. p. 131.

the paper's main research objects are the thirteen advisory opinions adopted by the International Court of Justice, where the great powers simultaneously presented the written statements. The research also will include the ideas and studies of the scholars about the problem.

The thesis consists of two chapters. The first chapter explores the past of the advisory jurisdiction of the court. Moreover, this chapter examines seven advisory opinions, where the Soviet Union and the U.S. presented written statements to the cases. These advisory opinions are Conditions of Admission of a State to Membership in the United Nations, 1948; Interpretation of Peace Treaties with Bulgaria, Hungary and Romania; Competence of the General Assembly for the Admission of a State to the United Nations, 1950; Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, 1951; Effect of Awards of Compensation Made by the United Nations Administrative Tribunal, 1954; Certain Expenses of the United Nations, 1962; and Application for Review of Judgment No. 333 of the United Nations Administrative Tribunal, 1987.

The second chapter expands on the process of dissolution of the Soviet Union. The chapter will examine the process of the succession and Russia as the successor of the USSR. Next, the chapter will explore the five advisory opinions of the court and written statements of Russia and the U.S. to the cases. These advisory opinions are Legality of the Use by a State of Nuclear Weapons in Armed Conflict; Legality of the Threat or Use of Nuclear Weapons, 1996; Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, 2004; Accordance with international law of the unilateral declaration of independence in respect of Kosovo, 2010; Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, 2019.

Keywords: advisory opinions; USSR/Russia; U.S.; written statements; political question.

1. SOVIET UNION/U.S. ATTITUDES TOWARDS THE ADVISORY OPINIONS

1.1 Advisory Opinions

The advisory function around the world firstly examined England in the twelfth century. The king of England sought advice on the state of law issue. For this reason, he invited judges to make compelling legal advice. On the other hand, the U.S. Constitution dismissed to grant the Supreme Court with the advisory function. The judges of the mentioned court even refused to provide an advisory opinion to President Washington. However, the formal establishment of the advisory jurisdiction took place in the 20th century, when Article 14 of the Covenant of the League of Nations conferred advisory competence to the PCIJ. The next step was Article 96 of the U.N. charter, according to which the founding member states granted the International Court of Justice with the same function.[27]

1.1.1. PCIJ experience in advisory jurisdiction

The introduction of advisory jurisdiction into international law has created a field for controversy.[28] The history of advisory competence began with article 14 of the Covenant of the League of Nations. The last sentence of the article referred to the advisory jurisdiction of the PCIJ. According to this article, the court had the right to give an advisory opinion on any dispute or questions. The Council and the Assembly were the authoritative bodies for bringing a dispute or matter to the court.[29] The significance of the PCIJ advisory jurisdiction emphasized even Institut de Droit International, which adopted a resolution regarding the advisory function of the court in 1937.[30] Although, after the adoption of the concept of advisory jurisdiction in the covenant, scholars' ideas diverged.[31] Based on M. Hudson, advisory jurisdiction was not practical due to the lack of judicial sanctions that could create obligations on the mentioned state.[32] On the other side, J. M. Pasqualucci discussed the same topic. He came to the idea that

[27] M. M. Aljaghoub. The Advisory Function of the International Court of Justice 1946−2005. Germany: Springer-Verlag Berlin Heidelberg 2006, p. 14.
[28] Ibid, p. 12.
[29] The Covenant of the League of Nations. *Supra note* 11, Art. 14.
[30] Institut de Droit International Resolution. La nature juridique des avis consultatifs de la Cour permanente de Justice internationale, leur valeur et leur portée en droit international. 1937.
[31] M. M. Aljaghoub. *Supra note* 27, p. 11.
[32] M. Hudson. The Permanent Court of International Justice, 1920-1942: A Treatise, New York: The Macmillan Company, 1943, p. 512.

the advisory jurisdiction of the court is broader than the judgments on contentious cases. At the very least, the advisory opinion serves as a general interpretation of international law.[33]

Adopting advisory jurisdiction in the covenant was not a simple process. Countries such as the United States questioned the usefulness and correctness of granting this right to the court. The advisory function of the court resolves many issues related to jurisdiction and jurisprudence.[34] Since its inception, PCIJ had delivered 27 advisory opinions. The Council has referred all of these 27 questions to the court. The mentioned fact emphasized the Assembly's passive involvement in the area of dispute settlement. As T. Sugihara said in his work, the most severe issue related to the advisory jurisdiction was the importance of having a line between the contentious and advisory jurisdiction of the court.[35]

The similarity between the two jurisdictional competencies of the court casts doubt on the usefulness of the advisory function. The vast majority of the advisory cases the PCIJ conducted with the necessary consent of the States concerned.[36] On one issue alone, the PCIJ declined to rule, and that was the Eastern Carelia case. The reason for the refusal of the court was the absence of the Soviet Union's consent.[37] The court refused the national judges' assignment on two occasions, during the advisory opinion procedures on Exchange of Greek and Turkish populations[38] and Mosul Cases[39]. Eventually, it is hard to deem that the advisory function of PCIJ was practical enough because of the reasons stated.

1.1.2. ICJ experience in advisory jurisdiction

Article 96 of the U.N. Charter adopts the concept of the advisory jurisdiction of the court.[40] Moreover, the entire chapter IV of the ICJ statute has specific rules related to the advisory function.[41] After the dissolution of the League of Nations and despite the uncertain experience

[33] J. M. Pasqualucci. The Practice and Procedure of the Inter-American Court of Human Rights, Cambridge: Cambridge University Press, 2003. p. 29
[34] M. M. Aljaghoub. *Supra note* 27. p.15.
[35] T. Sugihara. The Advisory Function of the International Court of Justice, 17 Japanese Annual of International law, 1973. p. 26-27.
[36] M. M. Aljaghoub. *Supra note* 27. p. 20-21.
[37] Status of the Eastern Carelia. PCIJ. Advisory Opinion. Ser. B, No. 5, 1923. p. 27-29.
[38] Exchange of Greek and Turkish Populations. (Greece v. Turkey). PCIJ. Advisory Opinion of 21 February 1925.
[39] Article 3, Paragraph 2, of the Treaty of Lausanne (Frontier between Turkey and Iraq). PCIJ. Advisory Opinion 21 November 1925.
[40] United Nations Charter. *Supra note* 17. Art 96.
[41] Statute of the International Court of Justice. San Francisco 1945. Chap. IV.

of the PCIJ with advisory jurisdiction. The founding member states granted The International Court of Justice the same function. According to article 96 of the U.N. Charter, the court must determine its jurisdiction based on the principles *ratione personae* and *ratione materiae*. In comparison to article 14 of the Covenant of the League of Nations, article 96 of the International Court of Justice expands the list of bodies that can request an advisory opinion. The extensive understanding of 'any disputes or questions' was also limited to 'any legal questions'.[42]

Jurisdiction *ratione personae*, as Derek Bowett wrote, solely the Security Council and the General Assembly have the 'original' rights to seek an opinion "on legal matters" from the court. Although, the specialized agencies and other U.N. organs enjoy the 'derivative' rights that possibly the General Assembly assigns to them. In some cases, States have criticized these two primary organs in written statements for acting as *ultra vires*.[43] Likewise, in the Certain Expenses advisory opinion,[44] France and the Soviet Union refused to pay their assessed shares because they considered that the General Assembly's resolutions were ultra vires actions. Despite this, the court did not decline any requests for an advisory opinion based on the problem of *ultra vires* actions. Thus, as some scholars argues, only the General Assembly and the Security Council enjoy an absolute right to bring 'any legal question' before the court.[45] Article 96(2) indicates the General Assembly's competence to authorize organs and specialized agencies that have the potential to request an advisory opinion from the court. Although, they can ask legal questions exclusively within the framework of their competence.[46] The term "other organs" in the article renders controversy.[47] Despite this fact, the U.N. counts three empowered principal organs to present the questions before the court. These organs are the Trusteeship Council, ECOSOC, and the Secretariat. Not only can the principal organs seek an advisory opinion, but the subsidiary organs also have the same powers. During the existence of the court, only two subsidiary organs have used the granted power. These subsidiary organs were the Committee for Applications for Review of Judgments of the Administrative Tribunals

[42] United Nations Charter. *Supra note* 17. Art. 96
[43] D. W. Bowett. "The Court's Role in Relation to International Organizations". Lowe, Vaughan & Fitzmaurice, Malgosia, (eds.), Fifty Years of the International Court of Justice: Essays in Honour of Sir Robert Jennings, Cambridge: Grotius Publications, 1996. p. 186
[44] Certain Expenses of the United Nations (Article 17, Paragraph 2, of the Charter). ICJ. Advisory Opinion of 20 July 1962
[45] M. M. Aljaghoub. *Supra note* 27, p. 40
[46] United Nations Charter. *Supra note* 17. Art. 96(2)
[47] M. M. Aljaghoub. *Supra note* 27, p. 41

and the Interim Committee of the General Assembly. Article 57(1) and 63 of the U.N. Charter regulates the topic of specialized agencies that are international organizations.[48] The General Assembly authorized sixteen specialized agencies that can request a court opinion under Article 96 (2) of the U.N. Charter. The most egregious case arose when the World Health Organization posed a question regarding nuclear weapons use in armed conflict. The ICJ declined jurisdiction based on the grounds that WHO was unable to ask questions related to the use of nuclear weapons.[49]

Articles 96 of the U.N. Charter and Article 65 of the Statute of the International Court of Justice adopt the jurisdiction *ratione materiae*.[50] According to these articles, the issue brought before the court must have a "legal" character. The ICJ underlined this in the Certain Expenses advisory opinion. As the court noted, it can render an opinion on the legal way structured questions. Those questions must pinpoint the international law issues. Although, these issues are likely also to have factual or political elements.[51] Besides, in other advisory opinions, the court has emphasized and substantiated the "legal question" scope. Likewise, in the case regarding the Interpretation of Peace Treaties with Bulgaria, Hungary, and Romania.[52] The most ambiguous cases where the court found jurisdiction, despite the fears on the political nature of the posed questions, were the Palestinian Wall Construction[53] and Kosovo's Unilateral Declaration on Independence[54] cases. Not only the court, also the scholars rendered their valuable asset in defining the 'legal question' issue. As Lissitzyn wrote, the organs must properly formulate the questions in order to exhaust the existing judicial instruments for an adequate response.[55]

The advisory opinions, in comparison with the contentious judgments of the court, have a recommendatory nature. As V. Tolstykh wrote, despite the non-binding nature of the advisory

[48] United Nations Charter. *Supra note* 17. Art. 57(1) and Art. 63.
[49] Legality of the Use by a State of Nuclear Weapons in Armed Conflict. ICJ. Advisory Opinion of 8 July 1996. p. 84
[50] Statute of the International Court of Justice. *Supra note* 40. Art. 65
[51] Certain Expenses of the United Nations. *Supra note* 15. p. 8-9
[52] Interpretation of Peace Treaties with Bulgaria, Hungary and Romania. ICJ. Advisory Opinion of 30 March 1950.
[53] Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory. ICJ. Advisory Opinion of 9 July 2004.
[54] Accordance with international law of the unilateral declaration of independence in respect of Kosovo. ICJ. Advisory Opinion of 22 July 2010.
[55] O. Lissitzyn. The International Court of Justice: Its Role in the Maintenance of International Peace and Security, New York: Carnegie Endowment for International Peace, 1951, p. 30.

opinions, they serve as the legal advice that interprets the international law. International organs that request advisory opinions represent the entire international community. Moreover, the advisory opinion is the product of that community's principal judicial organ. Although, the liability of the advisory opinions enforcement lies within States.[56]

1.2.3. Amicus Curiae

The concept of "court friends," commonly known as the *amicus curiae*, is deeply rooted in the Anglo-American legal system. *Amicus curiae* is a person not involved in a pending case. It addresses the court on his initiative, or the court asks to provide the materials. Since the mentioned person has an interest in the object of the dispute.[57] Common law countries firstly used the concept of *amicus curiae*. Although, gradually, the international judicial system also applied this principle. The third parties of the case differ from the concept of "court friends." The main difference between them is an interest. *Amicus Curiae* has no legal interest in this matter. The "court friend" holds only a piece of information that can help the court to make a fair decision.[58]

Some of the constituent documents of international courts apply the concept of *amicus curiae*. Although in the instances of the court's acceptance. In most cases, there is no direct regulatory system. It depends on the court to approve or not a statement of an organization or individual not a party to the case.[59]

Articles 62 and Article 63 of the Statute of International Court of Justice regulate situations when another state not participating in the given case may take part in adjudicating the dispute. According to these articles, a state not participating in the case must have a legitimate interest that the judgment will breach. Furthermore, when it is a party to the convention on which the parties have filed claims in the court.[60] In practice, there were situations when third parties submitted information to the court, albeit informally. A compelling example of this situation was the Corfu Channel case. When Yugoslavia challenged Britain's claim about the mined

[56] V. Tolstykh. Chast II, glava 12. *Supra note*. p. 229.
[57] B. A. Garner. Black's Law Dictionary. Ed. 8th edn. USA, Thomason West, 2004. p. 93.
[58] G. Shinkaretskaia. Institut 'druzei suda' v mezhdunarodnom sudoproizvodstve. Instituti Mezhdunarodnogo Pravosudia. Moskva, Mejdunarodnyie Otnoshenia, 2015. p. 34.
[59] Ibid, p. 35.
[60] Statute of the International Court of Justice. *Supra note* 41. Art. 62 and Art. 63.

canal, the court adopted the statement provided by Yugoslavia, though with some reservations.[61]

The International Court of Justice commonly uses the concept of amicus curiae in its advisory jurisdiction. As mentioned in article 66 (1) of the Statute, the Registrar has to immediately inform the states that intend to appear before the court. Moreover, states can initiate the receipt of an invitation from the Registrar. Based on this invitation, states should submit to the court their written or oral statements on the issue raised.[62]

International organizations can participate in advisory jurisdiction on two occasions. First, as a specialized agency that requests an advisory opinion based on Article 65 of the Statute.[63] Secondly, as the organization that can provide valuable information regarding the case.[64] In the advisory opinion of the construction of the Palestinian wall, international organizations such as the Arab League and the Organization of Islamic Cooperation asked the court to participate in the advisory procedures. [65]

The ICJ does not accept non-governmental organizations and individuals to submit statements. The Legality of the Threat or Use of Nuclear Weapons case was the best example of widespread condemnation of acceptance of non-governmental organizations to the procedures. Despite this, the court has the right to accept statements made by non-governmental organizations and individuals, although it refuses to apply them. The reason for this refusal must be related to the legal capacity of the court.[66]

The International Court of Justice in the Continental Shelf case emphasized the concept of amicus curiae. According to the court, the "court friends" should present their statements objectively, without any interest and partiality.[67] The presented research also evolves around the concept of amicus curiae and the written statements that the "court friends" submitted during

[61] Corfu Channel (United Kingdom of Great Britain and Northern Ireland v. Albania). ICJ. Judgment of 25 March 1948.
[62] Statute of the International Court of Justice. *Supra note* 12. Art. 66(1).
[63] Ibid, Art. 65.
[64] G. Shinkaretskaia. *Supra note* 58. p. 40.
[65] Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory. *Supra note* 53.
[66] G. Shinkaretskaia. *Supra note* 58. p. 62.
[67] North Sea Continental Shelf (Federal Republic of Germany/Netherlands). ICJ. Judgment of 20 February 1969.

the advisory procedures. Meticulously, around the statements rendered by Soviet Union/Russia and the U.S.

1.2. 1948 – 1950: First Cases and the Beginning of Cold War

The General Assembly referred the first-ever question to the ICJ in 1948. During the mentioned period also the Cold War started. The two greatest powers represented around the world, the Soviet Union on the one hand and the United States on the other, sought to show each other their superiority. The first advisory opinion dealt with the issue of admission of new members. The Soviet Union vetoed all the future upcoming members because they were afraid to include more capitalist countries in the U.N. The reported problem lasted for many years, and the best example of this was the advisory opinion issued by the court in 1950. In this advisory opinion, the General Assembly again posed a question regarding its role in the new member admission procedure. Article 4 of the U.N. Charter [68] describes the admission of new members and the role of the principal organs of the organization during these processes. Both great powers presented their written statements to the case. However, their attitudes towards the advisory function of the court vary from each other. In 1950, the court issued another advisory opinion regarding the interpretation of notions in the Peace Treaties with Bulgaria, Romania, and Hungary. Both states submitted written statements to the mentioned case. Communications presented by the great powers revealed their harsh attitude towards the advisory jurisdiction of the court.

1.2.1. Soviet Union written statements

The Soviet Union, in written statements during this period, showed its contrarian attitude towards advisory jurisdiction. In all three written statements, the Soviet Union denied the ICJ's right to discuss the posed question. Their communications in the first two cases regarding the admission of the new members consist of only a few lines that are not descriptive enough. Only the second question of the General Assembly on the procedure for admitting new members aroused the interest of the Soviets. Thus, in comparison to the other two statements, they submitted a more explanatory comment on their doubts about the ICJ's jurisdiction on the requested matter.

[68] United Nations Charter. *Supra note* 17. Art. 4.

The Soviet Union, on behalf of V. Valkov and M. Vetrov, challenged the jurisdiction of the ICJ on the posed questions. In the written statements, the Soviets expressed warnings about the court's judicial review power. Both communications on the new members' admission reflected the fears about this issue. In an advisory opinion dated 1948, the Soviet Union declined the court's competence to answer the posed question. Moreover, they emphasized that article 4 of the U.N. Charter exhaustively talks about the admission procedure. And this article does not provide any basis for the ICJ's interpretation.[69] In the advisory opinion dated 1950, the General Assembly posed a question that challenged the same article of the U.N. Charter. Meticulously, the role of the organization's principal organs in the new member admission procedure. The Soviet Union accurately demonstrated disgust towards the ICJ's competence in interpreting the U.N. Charter. The written statement noted that the ICJ was empowered to interpret treaties in connection with a legal dispute. However, the court did not have the authority to interpret the founding document of the U.N. They based their opinion on Article 36 of the Statute of the International Court of Justice. Moreover, as an argument, they cited the conference's decision, which emphasized that each U.N. organ should interpret the articles of the Charter related to their powers at their discretion.[70] Nevertheless, their reference to the question of the judicial power of the ICJ was fair enough. But the wording of the questions posed by the General Assembly was general and did not endow the court with the competence of judicial review.

The Soviets questioned the jurisdiction ratione materiae in their written statements. For the first time, they noted the dubious nature of the questions raised. The Soviet Union mentioned this warning in its written statement on the second question of new members' admission. They put forward the idea that the question on the role of the General Assembly in the admission process is politically involved. Eventually, this question did not fall within the scope of Article 96 of the U.N. Charter. They also defended their arguments with the discussions that took place on the General Assembly sessions.[71]

The PCIJ advisory jurisdiction has been criticized for its resemblance and almost complete assimilation with the contentious jurisdiction of the court. According to some scholars, in the

[69] Conditions of Admission of a State to Membership in the United Nations (Article 4 of the Charter), ICJ Rep., Written Statements, 1948, Section C, p. 28.
[70] Competence of the General Assembly for the Admission of a State to the United Nations, ICJ Rep., Written Statements, 1950, section C, p.100-102.
[71] Ibid. p. 100

Eastern Carelia case, the court denied its jurisdiction. Due to the lack of consent of the Soviet Union.[72] The Soviets raised the same question in a written statement on the interpretation of the peace treaties with Bulgaria, Hungary, and Romania, albeit in a positive way. According to them, the posed question concerned the internal competence of the mentioned states. Consequently, the court needed the consent of those states to render an advisory opinion on the request.[73]

All three written statements by the Soviet Union questioned the significance of the advisory jurisdiction of the court. For the most part, they have refused the jurisdiction of the court to issue advisory opinions and have tried to express their disgust at the questions posed by the General Assembly. Even in the case of the interpretation of peace treaties, the USSR did not have any interest. They still scorned the court's advisory function. This attitude showed the Soviet Union's indifferent ratio towards the advisory jurisdiction of the court. The beginning of the Cold War was the main reason for the Soviet Union's severe attitude towards the court's advisory function.

1.2.2. U.S. written statements

The United States, in comparison with the Soviet Union, expressed gratitude towards the advisory jurisdiction of the court. Their statements were sufficiently explanatory and revealed the country's point of view. During this period, the United States submitted written statements in all five advisory cases. Regardless, this study will seek to show the political tensions of states towards the court's advisory jurisdiction. Eventually, it is more important for the paper to evolve around those cases, where both of the parties concerned presented their written statements. This information will be a good source for assessment of the nature of the advisory opinions.

At the beginning of the advisory jurisdiction, the U.S. provided a summary of its views on the posed questions. Starting with the case on the new members' admission and carried on with the reparation for injuries case, the U.S. submitted modest written statements. Although, year by year, their communications got richer with explanations. The statements began to include

[72] M. M. Aljaghoub. *Supra note* 27, p. 20-21.
[73] Interpretation of Peace Treaties with Bulgaria, Hungary and Romania. Written Statements, 1950, section C, 199.

references to facts, historical events and tensions, notes from other states' communications, and, finally, the U.S. assessment on the posed question.

In the case dated 1949, where the General Assembly presented the question about the new members' admission, the U.S. was quite clear with its point of view. If the Soviet Union denied the court the right to issue an advisory opinion on the request, the United States noted that Article 4 of the U.N. Charter is exhaustive about the admission of a new member.[74] The USSR's statement was influenced by the desire not to involve in the U.N., many capitalist states. Eventually, the General Assembly posed a question because of the Soviets' vetoes.

The U.S. did not discuss the problems of judicial review competence of the ICJ in the mentioned written statements. In the opinion dated 1950, on the role of Security Council recommendations during the admission process, the United States provided a relatively broad and clarified overview. Despite such a rich explanation of their point of view, the statement revealed the states' political tensions and objectives. Whereas the Soviets' only briefly mentioned that Article 4 purely fulfills the mandatory role of the Security Council recommendation in the admission procedure, the U.S. supported the view presented by Argentina during the General Assembly's committee sessions. As they wrote, article 4, paragraph 2, the General Assembly should interpret in the manner of the Argentine proposal.[75] Although, Argentina's mentioned proposal during the committee sessions was rather contrary to the written terms of Article 4 of the U.N. Charter. The stated proposal presented new ideas, like favorable and unfavorable recommendations of the Security Council. Moreover, it diminished the effectiveness of the Security Council's recommendations and the veto power of a permanent member of the Council. Finally, this proposal would expand the General Assembly's competence in the new member admission procedure.[76] The self-interest of the U.S. has determined and influenced the written statement of the state. Since the USSR blocked the admission of new members, this proposal was an excellent opportunity to reduce the Soviet's veto power. In general, the U.S. wanted to downplay the significance of the recommendation of the Security Council, which could open the doors for the new U.N. members.

[74] Conditions of Admission of a State to Membership in the United Nations. *Supra note* 69. p. 20.
[75] Competence of the General Assembly for the Admission of a State to the United Nations. *Supra note* 70. p. 112.
[76] Ibid, p. 113.

As indicated earlier in the referred case, the Soviet Union spoke primarily about the political nature of the posed question. Although, the U.S. did not mention the same problem. None of the three written statements expresses the fear about the political nature of the General Assembly's request.

The U.S. was an interested party in the interpretation of the peace treaties with Bulgaria, Hungary, and Romania case. The U.S. was one of the signatories of the treaties with the other Allied States. Even though the Soviet Union was an allied power, their attitude to the mentioned case was different from that of the U.S. This situation emphasized tensions between the two great powers during the Cold War period. Compared to the USSR, the U.S. provided a complete description of the case assessment in a written statement. More precisely, they underlined that the given situation was not similar to the Eastern Carelia case. According to them, the resolution adopted by the Council of the League of Nations in 1923 posed a question to the PCIJ that already included the merits of the dispute between Finland and Russia.[77] Finally, the United States concluded that posed questions in the cases mentioned above were different and that the ICJ had the competence to issue an advisory opinion.[78] Diplomatic exchanges between the U.S. and the three concerned states emphasized that peace treaties contained provisions on procedures for the settlement of disputes. As a result, the treaty articles obliged Bulgaria, Hungary, and Romania to act in the manner set out in the agreement during the dispute settlement. Namely, to appoint representatives to the commission.[79]

The discussed cases exposed the contradictions of the great powers in their written statements. None of the communications presented by the U.S. and the Soviet Union shared the same ideas and thoughts. This fact perfectly underlined the beginning of the Cold War period and the reasons for the different attitudes of the great powers towards the advisory jurisdiction of the court during the emphasized time range.

[77] Interpretation of Peace Treaties with Bulgaria, Hungary and Romania. Written Statements. *Supra note* 73. p. 135-136.
[78] Ibid, p. 163.
[79] Interpretation of Peace Treaties with Bulgaria, Hungary and Romania. *Supra note* 23. p. 77-78.

1.3. 1951 – 1960: Moderated Attitude towards Advisory Opinions

From 1951 to 1960, the court issued six advisory opinions. Only in two cases did the great powers submit written statements to the court at the same time. In 1951, the first case concerned the states' reservations applied during the ratification of the convention.[80] During the Second World War, the atrocities that took place forced the international community to defend human rights rigorously. The first convention adopted by the U.N. was the Convention on the Prevention and Punishment of the Crime of Genocide.[81] The adopted convention has become a powerful instrument for the protection of human rights throughout the world. The problems appeared when the states decided to submit their declarations and reservations to the convention. The first country that made a reservation to the Genocide Convention was the Soviet Union. Based on this, the General Assembly presented to the Court three questions regarding reservations that States had objected to. Meticulously, the court was competent to decide the fate of the reserving state, which reservation the other signatory states of the convention condemned.

After three years, in 1954, the ICJ adopted another advisory opinion. The mentioned opinion dealt with the General Assembly's power to disclaim the decisions rendered by its subsidiary organ, precisely by the United Nations Administrative Tribunal.[82] The Fifth Committee of the General Assembly discussed the noted above issue thoroughly at the eighth session. Before 1960, the Soviet Union did not participate actively in any of the advisory opinions of the court. Although, the U.S. was a dynamic participator during the advisory procedures. Evidence of the mentioned is the four U.S. written statements to four other advisory opinions. The information provided above underlined the moderate attitude towards the advisory jurisdiction of the court. Previously, the Soviet Union tried to refuse the court's competence to answer the posed questions. During this time range, the USSR did not pay much attention to the advisory function of the court. Somehow, the U.S. was actively involved in the court's advisory procedures. A closer look at the written statements submitted by the great powers will provide compelling information about the states' moderate attitude towards the advisory jurisdiction of the court.

[80] Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide. ICJ. Advisory Opinion of 28 March 1951.
[81] Convention on the Prevention and Punishment of the Crime of Genocide. Paris 9.12.1948, Entry into force: 12.01.1951.
[82] Effect of Awards of Compensation Made by the United Nations Administrative Tribunal. ICJ. Advisory Opinion of 13 July 1954.

1.3.1. Soviet Union written statements

During the first decade of the ICJ's advisory jurisdiction, the Soviet Union questioned the court's competence to answer the posed questions in almost all of its written statements. On two occasions, they stressed that the issue raised grants the court with the judicial review power. In the second case, they doubted the nature of the posed question. As they emphasized, it was a political question. Thus, the court lacked the competence to consider the case. Over the next decade, the Soviets changed their attitude towards the advisory jurisdiction of the court. None of the written statements questioned the courts' competence to rule an advisory opinion. Compared to the old written statements, the Soviet Union began to review and assess the raised issues.

Despite the altered attitude of the Soviet Union towards the advisory jurisdiction, their written statements still were dry and non-explanatory. They managed to share their point of view in a few sentences. In comparison to the previous written statements, the new two communications were in French. Moreover, the posed question regarding the reservations to the Genocide Convention resulted from the Soviet Union actions. Nevertheless, their written statements were only short answers to questions without any explanation of their views. The preceding emphasized that the Soviet Union kept a dubious attitude towards the advisory jurisdiction of the court. Although, the two submitted written statements of the Soviet Union reflected the same ideas that the court handed down. In both of these advisory opinions, the ICJ concurred with the views expressed by the Soviets. However, in the genocide convention case, the court added that the applied reservations must be compatible with the purpose and object of the treaty.[83]

As mentioned earlier, the Soviets' actions initiated the case. Their reservation limited the force of Article XII of the Genocide Convention. In accordance with the reservation, all provisions of the convention should be applied to Non-Self-Governing Territories, as well as to Trust Territories. In a written statement, the Soviet Union wrote that they still stick to the idea presented at the Fifth Session of the General Assembly. More precisely, the Soviet government

[83] Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide. *Supra note* 47. p. 29-30.

believed that every state based on the sovereignty principle has an undeniable right to make a reservation to any treaty. The legal consequence of this reservation was that the treaty operated between the reserving state and all other parties to the treaty. Instead, the states that condemned the reservation. [84] The Soviet Union answered in the affirmative to the first posed question. Despite this, they barely answered the second question, saying nothing about the third one. This fact once again revealed how superficial their attitude was towards the advisory function of the court.

The communication submitted in the case "Consequences of the award of compensation by the United Nations Administrative Tribunal" was even shorter than the previous statements. The Soviets did not even explain adequately what their point of view was on the issue. According to their statement, they stood on the same idea, which the USSR delegation presented during the discussion of this matter at the 8th Session of the United Nations General Assembly. [85] The Soviet Union at the Session mentioned that they were against the referral of the case to the court. As they stated, the Statute of the United Nations Administrative Tribunal was clear about the raised issue. The General Assembly was not empowered to challenge the decisions made by the Tribunal.[86] Thus, there was no ground for the case referral to the ICJ for an advisory opinion. The court presented the same answers to the General Assembly's posed questions. The ICJ did not challenge the Soviet Union written statement.[87]

Based on the above, it was clear that the Soviets had changed their attitude towards the advisory jurisdiction of the court. For some reason, the presented alteration in their attitude was not enough to say that they were satisfied with the advisory function. Finally, it was still clear that political tensions substantially influenced the written statements, especially in the Genocide Convention case, when the Soviet Union did not even try to explain the dubious nature of the reservations. They dryly expressed their point of view exclusively on the first and partly on the second posed questions.

[84] Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, ICJ Rep., Written Statements, 1951, Section C, p. 21.
[85] Effect of Awards of Compensation Made by the United Nations Administrative Tribunal, ICJ Rep., Written Statements, 1951, Section C, p. 256.
[86] Ibid, p. 217.
[87] Effect of Awards of Compensation Made by the United Nations Administrative Tribunal. *Supra note* 82. p. 62-63.

1.3.2. U.S. written statements

The U.S., as in previous written statements, did not question the jurisdiction of the court. They kept the same attitude towards the advisory jurisdiction. Both submitted written statements were descriptive and explanatory. They accurately listed all the arguments with definitions and examples to defend the correctness of their point of view. During this period, the U.S. and the Soviet Union submitted written communications on five advisory opinions simultaneously. The reservation on the genocide convention case was the first instance when both great powers' shared almost similar views. The U.S. answered in the affirmative to the posed question, as did the Soviet Union. Although, on the 'Effect of Awards of Compensation Made by the United Nations Administrative Tribunal' case, the U.S. presented a different view. They answered in the affirmative to the first question. Nevertheless, the court's adopted an advisory opinion diverged from the U.S. point of view.

The United States began the written statement by mentioning the reasons for the adoption of the genocide convention. According to them, the atrocities committed during World War II prompted the international community to create a tool that could protect human rights. The U.S. has more accurately listed the genocides that took place throughout history. As exquisite examples of genocide, they recalled the persecution of Christians by the Romans, the massacre of Armenians in Turkey, and the extermination of millions of Jews and Poles by the Nazis.[88] Since the adoption of the genocide convention, only four states ratified the convention with reservations. The U.S. even listed the states. Those states were the USSR, the Byelorussian SSR, the Ukrainian SSR, and Czechoslovakia.[89] Moreover, in order to scrupulously clarify its point of view, the United States cited as an example the Soviet Union's reservation to the International Convention for Facilitating the International Circulation of Films of an Educational Character. Chile challenged the USSR reservation to this convention. Thus, the treaty did not apply between Chile and the Soviet Union. However, the convention lasted in power between those states that accepted the Soviet Union reservation.[90] Thereby, they drew an argument to foster their views. Simultaneously mentioning this case, they emphasized the

[88] Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide. *Supra note* 83. p. 25.
[89] Ibid, p. 26.
[90] Ibid, p. 37.

Soviets' attitude towards the reservation. It should be noted that, in comparison with the Soviet Union, the U.S. stressed that applying reservation on the constituent documents was a complex topic. Although, since the Genocide Convention was a relatively simple treaty, reservations could apply.[91]

The U.S. written statement on the Awards of Administrative Tribunal case was sufficiently descriptive. Compared to the Soviet Union, the U.S. presented a different view on an 'Effect of Awards of Compensation Made by the United Nations Administrative Tribunal' advisory opinion. If the Soviet Union was against the referral of the issue to the court. The U.S. declared that the General Assembly could disclaim the decisions of the United Nations Administrative Tribunal. As they wrote, the Administrative Tribunal was just a subsidiary organ of the General Assembly. Thus, the Assembly could challenge the decision of the Tribunal.[92] They recalled that according to the Statute of the Tribunal and the U.N. Charter, the Tribunal lacked the power to had supremacy over the General Assembly. Ultimately, the lack of authority to challenge the Tribunal decisions would violate the U.N. Charter and distort the role of the General Assembly.[93] Since the U.S. answered in affirmative to the first question, they answered the second posed question too. They underlined the U.N. Charter articles that equipped the General Assembly with the competence to challenge the decisions of the subsidiary bodies.[94]

The Advisory Opinion on the Genocide Reservation Convention was a prime example of the still ongoing Cold War that influenced the great powers' written communications. In all of its written statements, the U.S. emphasized the actions of the Soviet Union. Especially, mentioning other cases about the Soviet Union reservations revealed the hidden string of political struggle between the states. Despite this fact, during the mentioned time range, the U.S. has already demonstrated a responsible attitude towards the advisory jurisdiction. They submitted written statements to every six adopted advisory opinions by the court. Thus, the information mentioned above emphasized that the U.S. already started to use the advisory function of the court as the political platform to express the views on the ongoing events throughout the world.

[91] Ibid, p.43.
[92] Effect of Awards of Compensation Made by the United Nations Administrative Tribunal. *Supra note* 85. p. 185.
[93] Ibid, p. 159.
[94] Ibid, p.186.

1.4. 1961 – 1989: Advisory Opinions as the Main Political Expression Field

For almost 30 years, the court has issued only nine advisory opinions. The intrinsic question that the ICJ discussed during this time range was the Certain Expenses case. The posed question submitted by the General Assembly concerned the coverage of the costs of the U.N. Operation in the Congo (ONUC) and the U.N. Emergency Force in the Middle East (UNEF). The General Assembly authorized both peacekeeping missions in 1961. The problem arose when the two permanent members of the Security Council declined to pay their assessed share for the mentioned peacekeeping operations. Those permanent members of the Security Council were the USSR and France. In defense of their refusal, the states presented an argument regarding the General Assembly that lacked the competence to authorize the peacekeeping operations. Finally, they concluded that both missions were *ultra vires* actions of the principal organ. Thus, the states declined to pay for the *ultra vires* actions of the General Assembly.[95] During the mentioned time range, the "Certain Expenses" case was the first advisory opinion when both the great powers' submitted the written statements.

The second case was regarding the refusal of the Secretary-General that declined to renew the appointment of Mr. Vladimir V. Yakimetz. The assignment of a person who previously worked in the secretariat. The Secretary-General of the U.N. refused his selection based on the expiry of the national secondment. According to the Secretary-General, the national administration seconded Mr. Vladimir V. Yakimetz on his previous position. The secondment expired, and the duration of his contract with the U.N. depended on that document. The Committee on Applications for Review of Administrative Tribunal Judgments posed the questions to the court to review the impediments in the United Nations Administrative Tribunal jurisdiction. Moreover, an interesting aspect of this case was that Mr. Vladimir renounced his USSR citizenship and asked for asylum in the U.S. Consequently, both states presented the written statement to the case.

The United States has vigorously used the advisory jurisdiction of the court to submit statements in various cases. Interestingly, the Soviet Union presented the written communications to the court exclusively on seven advisory opinions. The U.S. also introduced its position to the seven

[95] S. Chesterman, I. Johnstone, D. M. Malone. Law and Practice of the United Nations. New York, Oxford University Press 2016. p. 238-239.

cases in question. The Cold War and intense political nature may be the cause of the situation described above.

1.4.1. Soviet Union written statements

During the mentioned period, the Soviet Union finally changed its attitude towards the advisory function of the court. Although they still were not active participants in this area, the presented written statements evidenced their altered ratio towards advisory jurisdiction. Previously, they were passive and tried to express their perspective in just some sentences, without any further explanation. The difference between the first written communications and the last one is that the latest statements emphasized the changes in the attitude. Both submissions of the USSR were explanatory. The Soviet Union explained its views with arguments and facts. Moreover, they no longer questioned the jurisdiction of the court.

The Certain Expenses case arose because of the refusal of the Soviet Union and France to pay their shares for the peacekeeping missions. Therefore, the written statement of the Soviet Union on this case was significant. For the first time, a communication of the USSR had a structure and was sufficiently explanatory. They presented a short overview of the situation in both UNEF and ONUC cases. They based the main argument on the fact that the General Assembly lacked the competence to authorize peacekeeping operations. According to their statement, the U.N. Charter exclusively proclaims the Security Council as the guardian of international peace and security throughout the world. Thus, the formation of the United Nations Emergency Forces laid under the competence of the Security Council.[96] Moreover, the Soviets mentioned articles of the Charter that emphasized that the General Assembly lacked any power to execute the actions for the maintenance of international peace and security. As the USSR wrote, the competence of the General Assembly is to make the recommendations. Based on this, the Soviets' were against paying their assessed share for the actions that were *ultra vires*. [97]

As they underlined, article 17 of the Charter was silent on the *ultra vires* expenses. For the first time in their written statement, the Soviets presented some facts. In defense of their claim, they cited the example of the San Francisco conference. Meticulously, they introduced the

[96] Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter), ICJ Rep., Written Statements, 1962, Section C, p. 271.
[97] Ibid, p. 274.

amendment to Article 19 of the U.N. Charter that Australia suggested to the Conference. According to the amendment, the Member States that practically fulfill their peacekeeping obligations were the organization's expenses. The San Francisco conference did not endorse the depicted amendment. As a result, the Soviet Union took the trouble to explain by this fact that the actions of the General Assembly were not the expenses of the organization.[98]

Despite the Soviet Union's endeavor to explain nonpayment, the court ruled against their point of view. The ICJ decided that the General Assembly resolutions on peacekeeping missions in the Middle East and Congo fall within the meaning of Article 17, paragraph 2, of the U.N. Charter. Consequently, these operations were expenses of the organization. The court ruled that Article 11 of the U.N. Charter clearly states the mandate of the General Assembly to maintain international peace and security. According to the court, as article 14 notes, the General Assembly empower to make recommendations for the peaceful settlement of any situation that could worsen peace among the nations. Moreover, these resolutions were recommendations of the General Assembly. Nevertheless, this fact does not exclude states from nonpayment of their assessed shares to the organization. [99]

Eventually, the Soviet Union, even after adopting an advisory opinion on the "Certain Expenses" case, still refused to pay its share. However, the states decided not to adopt the disqualification of the Soviets from voting. Thus, the members did not adopt article 19 terms of the U.N. Charter to the Soviet Union situation. An interesting fact is that even the U.S. agreed on the mentioned aspect. In the end, the General Assembly adopted a compromise formula, which meant that voluntary contributions covered the deficit caused by the refusal. [100]

The Soviet Union's written statement on the "'application for Review of Judgment No. 333 of the United Nations Administrative Tribunal" had some similarities with the Certain Expenses case. Here as well, the Soviets presented explanatory communication, describing their views with arguments and facts. Finally, their statement consisted of a clear overview of the Soviet Union's views on the case.

[98] Ibid, p. 273.
[99] Certain Expenses of the United Nations. *Supra note* 96. p. 179-180.
[100] S. Chesterman, I. Johnstone, D. M. Malone. *Supra note* 95. p. 250-251.

The Application for Review concerned the ex-Soviet Union citizen Mr. Vladimir V. Yakimetz, who renounced his place of residence and asked for asylum in the United States. This case was a prime example of the Cold War. Although, after the adoption of this advisory opinion, the Soviet Union existed for only four years. The Soviets did not question the decision of the Administrative Tribunal. Vice versa, they protected the judgment. As they noted, the Tribunal was right when it recalled the absence of a tripartite agreement as an obstacle to the extension of a fixed-term contract. The Soviet Union also underlined the actions of Mr. Vladimir. According to their statement, since the applicant had resigned from the official posts he held in the Soviet government and the United States had approved his asylum request, Mr. Vladimir had no mandate for future employment at the U.N.[101] Thus, the Soviet Union answered the second question in the same manner. They found no obstacles or errors in the decision of the United Nations Administrative Tribunal. [102]

The Soviet Union concluded the written statement noting that there was no legal basis for posing these two questions to the court. According to them, the Tribunal carried out an evaluation in a comprehensive manner, based on the relevant provisions of the U.N. Charter. Thus, it was inappropriate to seek an advisory opinion from the court. [103] In the end, the ICJ expressed the same position as the Soviet Union. They also did not find any obstacles or errors in the decision of the Administrative Tribunal.[104]

During the mentioned period, the Soviet Union was actively involved in the advisory jurisdiction of the court. Finally, the Soviets began to use the court's advisory function to express their views more openly. Both written statements had the structure. Moreover, for the first time, they even answered all the posed questions. During the Certain Expenses case, the Cold War was still an ongoing event. Although the Soviet Union adopted the Perestroika throughout its territory upon the Application for Review case. Eventually, determining the USSR's adjusted attitude towards the advisory jurisdiction of the court is an arduous task.

[101] Application for Review of Judgment No. 333 of the United Nations Administrative Tribunal, ICJ Rep., Written Stalements - Expods éeriis, 1982, p. 155.
[102] Ibid, p. 156.
[103] Ibid, p. 157.
[104] Application for Review of Judgment No. 333 of the United Nations Administrative Tribunal. ICJ. Advisory Opinion of 27 May 1987. p. 75.

However, one thing is clear: the Soviet Union began to use the advisory function of the court as a platform of the view expression.

1.4.2. U.S. written statements

The U.S. carried on using the advisory function of the court in the same manner as they harnessed it before. Both of their written statements were explanatory and descriptive. The U.S. communications diverge in the views with the Soviet Union statements. The views of the great powers differed from each other on every aspect of the raised issues.

In the Certain Expenses case, the U.S., according to the structure, gradually explained their opinion. In the beginning, they presented a brief overview of the situation. The U.S. talked about the events that influenced the creation of the UNEF and ONUC peacekeeping operations. Besides, they noted problems regarding the payment procedures for the mentioned peacekeeping missions. Finally, after drawing up a complete picture of the processes, the United States concluded that the General Assembly fairly assessed expenditures for UNEF and ONUC as the 'expenses of the organization' following the terms of article 17 of the U.N. Charter.[105] The U.S. also presented a brief overview on the adoption of article 17 of the U.N. Charter. However, their manner of explanation was different from the USSR statement. The U.S. shortly discussed the Dumbarton Oak Conference and the draft text adoption of article 17 by the states.[106] The Soviets' in their written statement, put forth the idea about the lawless actions and improper apportion of budget on peacekeeping operations by the General Assembly. The U.S. cited several past examples of missions in Palestine and the death of Count Bernadotte to clarify their point of view. Finally, the statement emphasized that the General Assembly is the only primal organ responsible for approving and apportioning the budget of the United Nations.[107] The U.S. made an interesting reference about the interdependence of implementing recommendations and the functioning of the subsidiary organs on the voluntary contributions. Based on the statement, interdependence would reduce the possibility of managing effective actions in the mentioned realm.[108]

[105] Certain Expenses of the United Nations. *Supra note* 96 p. 209.
[106] Ibid, p. 194.
[107] Ibid, p. 198-199.
[108] Ibid, p. 202.

After all, the U.S. had the same opinion towards the case as the ICJ ruled. They did not doubt the obligation of Member States to pay the assessed shares for UNEF and ONUC operations. Moreover, they respectfully submitted a statement emphasizing that the expenses of the peacekeeping missions approved by the General Assembly were the "expenses of the organization" following the provisions of Article 17, paragraph 2, of the U.N. Charter. Interesting is the fact that, despite the Soviet Union's refusal to pay assessed shares, the U.S. took a position not to disqualify the Soviet Union from the voting procedure.[109]

The U.S. also submitted the written statement on the Application for Review case. They presented an explanatory communication full of arguments and facts. Compared to the written statement of the Soviet Union, the U.S. held a different opinion on this matter. They defended Mr. Vladimir V. Yakimets and introduced the reasons why the decision of the United Nations Administrative Tribunal was erroneous. Although, in the end, the court took a different position and did not share the U.S. point of view with the case.

In the beginning, the U.S. provided a brief overview of the case. They listed the events that influenced Mr. Vladimir V. Yakimetz's situation. Then they presented some arguments to clarify their point of view. In the statement, the U.S. questioned the use of the Rosescu case[110] by the Administrative Tribunal. The communication stresses that the wishes of Member States should not be able to prevail over the interests of the U.N. In the present situation, the U.S. underlined that the Administrative Tribunal erred when they required the Soviet Union's secondment as the basis for the appointment of Mr. Vladimir. They shortly reviewed the Rosescu case to depict the court's error for fortifying an argument with the mentioned case. Moreover, the U.S. has put forward the idea that the applicant had every right to have a reasonable consideration for a career appointment.[111]

Finally, the U.S. ultimately rejected the correctness of the decision of the United Nations Administrative Tribunal. According to the statement, the Tribunal did not exercise its jurisdiction to establish legal obstacles to the further employment of Mr. Vladimir V. Yakimetz

[109] S. Chesterman, I. Johnstone, D. M. Malone. *Supra note* 95. p. 251.
[110] In re ROSESCU. Judgment No. 431. The Administrative Tribunal. 11 December 1980.
[111] Application for Review of Judgment No. 333 of the United Nations Administrative Tribunal. *Supra note* 101. p. 176.

at the United Nations. After all, the decision of Tribunal No. 333 was an error, based on the Charter of the United Nations.[112] The main reason for the U.S.'s rejection of the Tribunal's decision was Mr. Vladimir's action. This man renounced Soviet citizenship and asked for asylum in the U.S. Thus, the United States made every effort to defend the applicant's interests vigorously. For them, it was an excellent opportunity to show each state how insidious the internal policy of the Soviet Union was that even its citizen decided to renounce the citizenship of his homeland. This fact once again underlined the acute relationship between the great powers during the Cold War period.

During the Cold War, the United States actively used the opportunity to submit the written statements to advisory opinions of the court. Compared to the Soviet Union, they presented the communication on almost every posed question. Initially, their statements were modest as it was already discussed, but after a few years, all their opinions were explanatory, based on the facts and arguments. The interesting point is that the U.S. submitted the written statements in every case, where the Soviet Union participated as the court's friend. Nevertheless, the Soviets presented their communications solely on the basis of the court's seven advisory opinions under discussion. With regard to the advisory opinions referred to, States shared their views only on the Reservations on Genocide Convention case. In other cases, their ideas were at odds with each other. This fact underlined the dilemmas of the Cold War. Moreover, the state's attitude towards the advisory function of the court presents a vivid image of the marked period.

[112] Ibid, p. 183-184.

2. RUSSIA/U.S. ATTITUDES TOWARDS THE ADVISORY OPINIONS

2.1. Dissolution of the USSR and Emergence of Russia

As Lauri Malksoo writes, the dissolution of the Soviet Union was a most notable event of a world-historical scale. Eventually, it was an event that changed the balance of powers around the world.[113] The havoc of the USSR commenced when Mikhail Gorbachev came into power in 1985. Gorbachev implemented a novel course of alterations, which objective were to transform the Soviet polity.

The first step of the mentioned transformation was the implementation of "Perestroika" in 1986. It was an event, which aimed to change the mindset of Soviet society. Moreover, Gorbachev included the soviet system competitive elections, which altered the already mounted notion of democracy. In 1987, the soviets presented the principle of glasnost. According to this principle, all the 'blank pages' of soviet history were open and transparent to the society.[114] In 1988, the process of shift from traditional Soviet symbols sped up. As Gorbachev said, all the implemented events were the switch to genuine Socialism. On that Socialism that affirmed Vladimir Lenin, although altered and deteriorated Stalinism. The 1988 year brought some other more rigorous changes in the USSR. At the XIX Conference, the party introduced the new Soviet model. The given novel system included:

- The weakened administrative competence of the party.
- The institution with a more robust legislature.
- Semi-free competitive elections.
- Enunciation of the principle of a law-governed state.

Moreover, the conference was a great example of a departure from the past because of prevalent criticism in the speeches and spontaneity. The mentioned was the result of the newly adopted path of the Soviets. The practical reality of the undergoing processes reinforced the freshly emerged Soviet conception. After the XIX Conference, solely three years passed for the complete rearrangement of the traditional Socialism system. During the noted period, the

[113] L. Mälksoo. The Controversy over Human Rights, UN Covenants, and the Dissolution of the Soviet Union. Japanese Yearbook of International Law, Vol. 61. Tokyo, International Law Association of Japan 2018. p. 260.
[114] G. Gill. Symbolism and Regime Change in Russia. New York, Cambridge University Press, Chap. 2, 2013. p.14.

domination of the Communist Party vanished because of the newly emerged independent political parties and movements. Besides, they removed two terms from the USSR Constitution. Firstly, an article with the notion about the "leading and guiding" role of the Communist Party. Secondly, they replaced the concept of 'socialist pluralism' with the notion 'pluralism.' [115]

In 1989, opposition openly criticized Gorbachev's new policy model. Despite this fact, he continued the chosen path with the same symbolical meaning of Lenin and social past. Gorbachev defended perestroika with all of his powers and called it the 'socialist choice' that was the renewal of the society. Critics of the chosen policy were quite harsh. As they emphasized, in recent years of Gorbachev's governing, his actions mostly referred to Lenin as the person. Instead of Lenin's ideas, ideological heritage, and writings. [116] Already in mid-1991, the party announced new alternative visions. Despite the chosen novel path for the improvements, the issues appeared when the line between the old system and the new one vanished. People commenced questioning what constituted the emerging model. The distrust of Gorbachev enhanced the seed of despise towards the rearrangements. Despite Gorbachev's modern visions, Soviet society still associated him with the Communist Party. Therefore, the given fact diminished the trust toward Gorbachev's actions. [117]

Those as mentioned above emphasized the years of the changes in the USSR. The Perestroika led to the emergence of a large number of independent groups of society in the country. Those societies were the source of novel views that extended to the complete political spectrum. Moreover, some of them even expressed their visions of amendments that could build a better future of the Soviet society. The other notable alteration was the emergence of the national organizations that raised ideas about detachment from the Soviet center and republican sovereignty. The spare holders of the conveyed ideas were the national front groups of the Baltic republics. Interesting is the fact that the presented visions of the national organizations differed from the core of Gorbachev's conception. The primary point of the republican political movement was to create an entity that could depend and be separate from the USSR at the same time. This image, which Gorbachev emanated, involved the havoc of the union and the

[115] Ibid, p. 15-16.
[116] Ibid, p. 17.
[117] Ibid, p. 19.

emergence of the new entity with free national states. Boris Yeltsin was a pivotal figure in the course of Russian development.[118]

The significant event during the perestroika was the referendum regarding the conservation of the USSR as a union of equilibrium states. The Soviets held a referendum on Sunday, 17.3.1991. The mentioned right on the referendum, the Congress of People's Deputies of the USSR implemented in the law named 'Concerning National Voting' on 27.12.1990. Article 5 of the law emphasized that the Supreme Soviet of the USSR had the competence to conduct the referendum on the country's entire territory. The referendum results were familiar: 32 303 977 citizens of the USSR voted against the preservation of the USSR, though 113 512 812 were up to keep the unity. In the final count, 80.03 % of the whole society participated in the voting procedure.[119] Solely nine states out of fifteen Soviet Republics took part in the noted referendum. Other six states called for a boycott. The boycotting countries were three Baltic States (Estonia, Latvia, and Lithuania), Georgia, Armenia, and Moldova. As critics of this period emphasized, the Soviet governors held a referendum at a time of the already paralyzed central government of the Union. Moreover, at that time, the USSR ostensibly de facto had stopped to exist. Despite these facts, according to the law mentioned above, if more than half of the enrolled citizens participated in the referendum and the same number of citizens approved the decision, the results were considered lawful and valid. Interesting is the mention that despite despise and boycotts on the territories of those opponent six countries, the referendum still took place on their territories.[120]

After the announcement of referendum results, the government of the USSR had three plausible schemes for action. According to the first plan, the Soviets ensured to conserve the unity of the republics and keep the Soviet Union with all of fifteen states ('format 15). The applicable law had the power to diminish the will of the boycotting six countries. Therefore, they could join the 'format 15' scenario based on the legislation. The second scheme suggested preserving the general traits of the USSR and uniting the nine states that participated in the referendum under the renewed federation ('format 9+1). The major point of the given scenario was to render the

[118] Ibid, p. 20-21.
[119] A. Salenko. Legal Aspects of the Dissolution of the Soviet Union in 1991 and Its Implications for the Reunification of Crimea with Russia in 2014. Heidelberg Journal of International Law. Germany, Max Planck Institute for Comparative Public Law and International Law, 2015. p. 144-145.
[120] Ibid, p. 148-149.

secession of those six boycotting countries from the USSR. The mentioned format could bring independence to those countries that strained to be out of the Soviet Union. Genuinely, Gorbachev preferred the second scenario to tackle the risen issues in the USSR. The last third offer proclaimed to null the referendum's outcome because the USSR already de facto ended its existence ('union dissolution format'). Boris Yeltsin, the leader of the RSFSR, Stanislav Shushkevich, and Leonid Kravchuk, the leader of the Ukrainian SSR, endorsed the noted scenario. Their choice fell exactly on the 'union dissolution format.'[121]

Despite the citizens' will to preserve the unity of the USSR, it was arduous to keep together the fallen castle. After some months, the President of the USSR, Mikhail Gorbachev, based on the considered principles, announced his resignation and termination from the presidency. One day later, the Soviet Union received a declaration on the cease of the existence of the USSR. However, the noted declaration had an affiliation with the Commonwealth of Independent States (CIS). According to the CIS founding document, the organization welcomed all post-Soviet Union states and other countries that shared the principles and purposes of the entity. Eventually, after the decree of termination from the presidency, the Russian Federation substituted the Communist Party of the Soviet Union. The Communist Party lacked the power to protest against the maintained stipulations. As a result, the party decided to dissolve.[122] As Toshihiko Ueno wrote, the reasons for the dissolution of the union should be found in the shortage of 'iron discipline' and robust unity in the Communist Party.[123] It was the eventual outcome of the adopted actions during the perestroika. Despite this, the ideas on the reasons for the dissolution of the USSR diverge from each other. With the reasons mentioned above, scholars like Toshihiko Ueno claim other specific points that affected the unity of the Soviet Union. According to him, the decrease in the number of the Communist Party, diminishing prestige, and mental wavering on the Communists were the primary reasons for the dissolution.[124] Nevertheless, Lauri Malkso emphasizes that not only the issues in the inner structure of the Communist Party affected the unity of the Soviet states. The breach of Human Rights played a significant role in the dissolution processes of the USSR.[125]

[121] Ibid, p. 153.
[122] Ibid, p. 157-157.
[123] T. Ueno. The Process of Dissolution of the Communist Party of the Soviet Union: A Statistical Analysis. Korean Journal of Defense Analysis, Volume 6. South Korea, Korea Institute for Defense Analyses, 1994. p. 196.
[124] Ibid, p. 197.
[125] L. Mälksoo. *Supra note* 113. p. 261.

On 21 December 1991, all the USSR states, instead of Baltic States (Estonia, Latvia, and Lithuania) and Georgia met with the signatory countries of the Minsk Agreements. At that meeting, the states declared the decease of the Soviet Union and the foundation of the CIS organization. According to the Alma Ata Declaration, the USSR ceased to exist on the world map. Nevertheless, the questions aroused when the topic came to the substitution of the USSR seat at the U.N. Russia, Belarus, and Ukraine were on the list of the constitutor states of the United Nations. Despite this fact, Ukraine and Belarus already were members of the organization. Therefore, the Council of the Heads of State of the CIS decided to endorse Russia as the successor of the USSR at the U.N.[126] Moreover, succession included the issues regarding the place in the Security Council as the permanent member and Soviet veto power. Interesting is the fact that none of the P5 countries of the Security Council objected to the USSR substitution by Russia. Not even the permanent members protested the mentioned succession. After the dissolution of the USSR, The first meeting of the Security Council members occurred in January 1992. At that time, the nameplate of the Soviet Union changed to the nameplate of Russia. Although, none of the members of the Council raised a word about the presented issue. The same situation took place in other specialized agencies of the U.N. Russia simply replaced the seat of the USSR. Solely, the International Trade Organization (ILO) requested the formal decision to accept Russia in the place of the Soviet Union.[127]

The scholars presented different views regarding the USSR's seat at the U.N.[128] According to Rein Mullerson, Russia was a legitimate successor of the Soviet Union. For the defense of this idea, he presented four main reasons. First, Russia's territory encompasses three-quarters of the USSR territory. Secondly, half of the resources and the population of the Soviet Union gathered in Russia. Thirdly, in the time range from 1917 until 1922, Soviet Russia appeared as the heir of the Russian Empire. Fourthly, the third states widely accepted Russia's legal status as the USSR's successor state.[129] In contrast to Rein Mullerson, Yehuda Z. Blum wrote that the collapse of the Soviet Union should have had the same consequences for all fifteen-member states of the union. The seat of the USSR in the U.N. should be automatically canceled. Thus,

[126] S. Chesterman, I. Johnstone, D. M. Malone. *Supra note* 95. p. 213.
[127] Ibid, p. 214-215.
[128] Ibid, p. 215.
[129] R. Mullerson. The Continuity and Succession of States, by Reference to the Former USSR and Yugoslavia. International & Comparative Law Quarterly, vol. 42(3), 1993. p. 473.

like other newly emerging independent states, Russia would apply and be accepted as a new member of the organization.[130]

Upon the collapse of the USSR, the Vienna Convention on the Succession of States in Respect of Treaties[131] has not yet entered into force. Although, the treaty never contained the concept of a state that can be the legal successor of the entire legal entity after dissolution.[132]

2.2. 1991 - 2000: The New Balance of Powers around the World

After the collapse of the USSR, the balance of powers around the world altered. Russia proclaimed itself as the successor of the Soviet Union and took the place of the country that before united the fifteen states. Finally, the dissolution of the USSR ceased the Cold War. Even though the severe tension between the Soviet Union and the U.S. ended, it is still interesting how Russia carried on the hereditary of the USSR in the advisory jurisdiction of the ICJ. Moreover, what kind of ratio those two states, Russia and the U.S., had towards the advisory function of the court.

In the mentioned time range, both the Great Powers simultaneously submitted written statements on the 1996 advisory opinions. Those two cases concerned the issues of the legality of the use of nuclear weapons. The first time the World Health Organization submitted a question regarding the mentioned problem. According to the implied powers doctrine, the WHO had an opportunity to ask the court to give an advisory opinion.[133] The presented question noted that the use of the nuclear weapon in armed conflict or in a war infringes the WHO's constitutional obligations.[134] Despite the right of the organization to request an advisory opinion, the ICJ refused to provide an answer. According to the court, the submitted question was out of the scope of activities of the organization. Although, ICJ found jurisdiction on the almost same question posed by the General Assembly.[135]

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[130] Y. Z. Blum. Russia Takes over the Soviet Union's Seat at the United Nations. European Journal of International Law, vol. 3, 1992. Oxford, Oxford University Press, 1992. p. 360.
[131] Vienna Convention on Succession of States in respect of Treaties. Vienna on 23.08.1978. Entry into Force: 6.11.1996.
[132] S. Chesterman, I. Johnstone, D. M. Malone. *Supra note* 95. p. 216.
[133] Ibid, 122.
[134] Legality of the Use by a State of Nuclear Weapons in Armed Conflict. ICJ. Advisory Opinion of 8 July 1996. p. 68.
[135] Ibid, p. 84.

The permanent members of the Security Council shared similar interests in the realm of nuclear weapon nonproliferation. Moreover, all of the P5 possess nuclear weapons.[136] Therefore, the great powers written statements shared almost equal ideas and thoughts. Although, a comparative overview of the communications will provide a more accurate image of the situation.

2.2.1. Russia written statements

Russia, in comparison with the Soviet Union, has become more active in submitting written statements. Their first submission was regarding the WHO's question on the use of nuclear weapons in the armed conflict. On the mentioned issue, Russia presented two pages long explanatory statement, where they define their thoughts and ideas towards the case. The Soviet Union, solely at the end of their existence, began to provide informatory written communications. Even from the very beginning, Russia continued the chosen path of the USSR and submitted explanatory statements with arguments, facts, and discussions.

Russia's first-ever written statement versus the Soviets' communications did not challenge the court's jurisdiction. They just emphasized the reasons why the court was not empowered to answer the requested question. According to Russia, the ICJ lacked the power to discuss the case on the merits because the posed question was not a legal one. Moreover, they blamed that WHO acted *ultra vires*, as they lacked the competence to present a question on the risen issue.[137] Finally, they insisted that the court should not approve the request of the organization.[138] An interesting fact is that Russia explained the essence of the dubious attitude to the problem by the nature of the question posed. According to their statement, the question was more political. Therefore, this instance made the request legally invalid. The Soviet Union only once underlined the political tension in the formulated question. Somehow, Russia did the same in the mentioned case. As they added, the use of a nuclear weapon in its essence is a political issue. Russia did not exclude the existence of the problems regarding nuclear non-proliferation.

[136] S. Chesterman, I. Johnstone, D. M. Malone. *Supra note* 95. p. 281.
[137] Legality of the Use by a State of Nuclear Weapons in Armed Conflict. ICJ. Rep., Written Statement of the Government of the Russian Federation, 7 June 1994, p. 1.
[138] Ibid, p. 2.

They emphasized that matters are more complex, including other questions, which are bonded with the legitimate use of nuclear weapons.[139]

The first advisory opinion regarding nuclear non-proliferation revealed that Russia compared to the Soviet Union, started to analyze situations profoundly. They do not just assess or shade the court's jurisdiction over the posed question. They, in an explanatory manner, distinguished their views towards the case. The political nature of the question and ultra vires actions of the WHO were the essential aspects of their statement. The second written communication by Russia retained the same attitude and tension as in the first statement. Moreover, they were more precise and strained to protect their views. In the beginning, they repeatedly refused, for the second time, the WHO's right to submit the question regarding the use of the nuclear weapon. As they emphasized in the statement, the case discussion on the merits could harm the court's image and the international law in general. They explained that this would be an endorsement for organizations to act *ultra vires*.[140] Interesting is the fact that Russia, for the first time, used other member states' written statements as a reference to prove the correctness of their point of view. Russia tried to show that the question of WHO was groundless and included the political component. Nevertheless, in the end, the court ruled a similar decision. According to the court's opinion, the WHO lacked the competence to submit questions regarding the use of nuclear weapons in armed conflict. As they underlined, this issue did not fall under the aim and scope of the organization.

Even though Russia rigorously declined the accuracy of the WHO's posed question. They submitted an explanatory opinion on the question posed by the General Assembly. As they emphasized, the new formulated question was in a general manner and covered the issues raised by the WHO. The General Assembly posed a question with a broad range regarding the international law permissions on the use of nuclear weapons.[141] Russia strained to reveal the flaws of the request. They underlined the nature of the question and wary about the importance of the distinction between using nuclear weapons during self-defense and the use of nuclear weapons by the aggressor. Russia mentioned that none of the international treaties included the

[139] Ibid, p. 2.
[140] Legality of the Threat or Use of Nuclear Weapons. ICJ. Rep., Written Statement and Comments of the Russian Federation on the Issue of the Legality of the Threat or Use of Nuclear Weapons, 16 June 1995. p. 4.
[141] Ibid, p. 4.

clauses about the prohibition on the use of nuclear weapons.[142] To the defense of their point of view, Russia mentioned the terms of article 51 of the U.N. Charter.[143] According to their statement, article 51 admits self-defense as the inherent right of the state to protect itself individually or in a collective manner. Simultaneously, the charter acknowledged the use of a nuclear weapon by the attacked state.[144] Russia even underlined that the resolutions adopted by the General Assembly regarding the prohibition of nuclear weapons had just a recommendatory nature. Therefore, those resolutions were not binding on the member states. Moreover, they put forth the idea that adopted resolutions had no basis in the U.N. Charter.[145] Russia paid attention to other treaties and laws as well. Finally, they came to the opinion that none of those treaties, likewise the Antarctic Treaty [146]of 1959, did include any stipulations on the forbiddance on the use of the nuclear weapon. Russia in the statement underlined the connection between the use of nuclear weapons and the demise of humans' life. They cautionary depicted article 3 of the Universal Declaration of Human Rights[147] and article 6 of the International Covenant on Civil and Political Rights[148]. Besides, they presented an example of Article 2, paragraph 7 of the European Convention on the Protection of Human Rights and Fundamental Freedoms[149], which talks about the deprivation of human lives during the lawful use of force.[150] To precise their opinion, Russia mentioned the "Martens Clause," from the preambles of the Convention concerning the Laws and Customs of War on Land [151] and the Convention Respecting the Laws and Customs of War on Land.[152] Nevertheless, they refused the "Martens Clause" importance with the nuclear weapons case. According to their written statement, nowadays, the "Martens Clause" lacked the power and was formally inapplicable.[153] Sometimes the written statement of the Russian Federation looked ambiguous. They emphasized that treaty law kept silent about the use of nuclear weapons, though the customary law put some constraints. Despite the mentioned information, they refused it next, saying that there is no customary rule on the

[142] Ibid, p. 5.
[143] United Nations Charter. *Supra note* 17. Art. 51.
[144] Legality of the Threat or Use of Nuclear Weapons. *Supra note* 140. p. 8.
[145] Ibid, p. 16.
[146] The Antarctic Treaty. Washington 1.12.1959, Entry into force: 26.06.1961.
[147] Universal Declaration of Human Rights. Paris 10.12.1948. Art. 3.
[148] International Covenant on Civil and Political Rights. New York 16.12.1966, Entry into force: 23.03.1976. Art.6.
[149] European Convention on the Protection of Human Rights and Fundamental Freedoms. Rome 4.11.1950, Entry into force: 3.09.1953. Art.2.
[150] Legality of the Threat or Use of Nuclear Weapons. *Supra note* 140. p. 5.
[151] Laws and Customs of War on Land. Hague 18.10.1907, Entry into force: 26.01.1910.
[152] Convention Respecting the Laws and Customs of War on Land. Hague 18.10.1907, Entry into force: 26.01.1910.
[153] Legality of the Threat or Use of Nuclear Weapons. *Supra note* 140. p. 13.

prohibition of the use of nuclear weapons.[154] Finally, with the description of some points, they concluded that there is not exist any *opinio juris* or universal practice on the legitimate use of the nuclear weapon. Thus, there was no provision in customary law that would prohibit the use of nuclear weapons by the states.[155] Russia finished a written statement mentioning that despite the lack of provisions in treaty and customary law, on some occasions, there still exist limitations on the use of nuclear weapons. From their point of view, the utilization of the weapon should be done based on the military activities methods and humanitarian law principles. Moreover, as they emphasized, every case on nuclear weapons shall be dealt with on a case-by-case basis.[156]

In comparison to the Soviet Union, the Russian Federation altered its attitude towards the advisory jurisdiction of the court. The short overview of the presented two written statements underlined many essential points. Russia, as the nuclear weapons possessor country, tried to defend the use of the mentioned weapon. Their statements tried to explain that none of the international treaties and customary law clauses prohibits the use of nuclear weapons. Despite this fact, interesting is the first written statement that raised doubts about the political nature of the posed question. They strained to reveal all the hidden political components of the WHO's submitted question. Even the fact that they found similarities to the question formulated by the General Assembly underscores that Russia still considered the new request to be a politically significant issue. Although, Russian Federation presented a quite explanatory statement on the General Assembly's posed question. Interesting is the fact that Russia rigorously strained to protect the use of nuclear weapons during self-defense. The court judges' votes were seven to seven on the mentioned issue.[157] Thus, there is still no official statement on the use of nuclear weapons during self-defense. Nevertheless, the ICJ's adopted advisory opinion presents the same ideas as Russia noted. The court solely added that nuclear disarmament should be done under effective international control and in good faith.[158]

[154] Ibid, p. 18.
[155] Ibid, p. 14.
[156] Ibid, p. 18.
[157] Legality of the Use by a State of Nuclear Weapon. ICJ. Advisory Opinion of 8 July 1996. p. 44.
[158] Ibid, p. 45.

2.2.2. U.S. written statements

After the collapse of the Soviet Union, the United States continued to use the advisory function of the court as a platform for expressing its views on the initiated cases. Compared to the Cold War period, there are some clear differences between the new and old written statements of the United States. Both presented states, Russia and the U.S., possess nuclear weapons. Therefore, U.S. communications also included some interesting points about the case.

They submitted the first written statement regarding the WHO's posed question. As they noted, paragraph 2 of Article 96 of the U.N. Charter provides an opportunity for other organs and specialized agencies to submit a question before the court for an advisory opinion. Although, those questions have to fell under the scope of the organization.[159] Therefore, the WHO had a limited right to request an advisory opinion. The court ruled the same in its advisory opinion dated 1996. In defense of its opinion, the United States reminded the court of the results of a question posed by WHO regarding the interpretation of the treaty concluded between the WHO and Egypt.[160] With this example, the U.S. underlined that the newly posed question was not legal. Therefore, the court lacked the competence to discuss the case on the merits. According to the U.S., the primary role of the WHO was to assist countries in reinforcing positions of health services. Therefore, the issues regarding the use of nuclear weapons were not part of the organization's endeavor, and WHO had no authority under its constitution to pose a question on the problem mentioned above.[161] Moreover, the WHO had not even emphasized any other articles of their constitution as the basis of their request.[162] The U.S. presented many other arguments during their lengthy statement, which included the robust reasons against the WHO's request. One of the strongest arguments was that WHO had never regulated the nuclear weapon issues. Thus, the formulated question was against their constitution and the international community.[163] Finally, the U.S. presented this complete image, to sum up with the idea that the posed question was an attempt to pursue political aims regarding the use of nuclear weapons. They tried to show what was the fundamental nature of the WHO's request.

[159] United Nations Charter. *Supra note* 17. Art. 96(b).
[160] Legality of the Use by a State of Nuclear Weapons in Armed Conflict. ICJ. Rep., Written Statement of the Government of the United States of America, 10 June 1994, p. 5.
[161] Ibid, p. 8.
[162] Ibid, p. 6.
[163] Ibid, p. 10.

The U.S. asked the court to refuse the issue of an advisory opinion. As they mentioned, article 65 of the U.N. Charter[164] grants the ICJ the discretion to render or not the advisory opinion on the posed question. Consequently, in the present case, they asked the court to exercise its discretionary powers by refusing to issue an advisory opinion.[165] In the presented explanation, the U.S. mentioned a significant reason for despising the formulated question. As they wrote, the request was ambiguous and standard, which included complex technical, practical, legal, and political components. Moreover, they warned the court not to answer the question, which concerned the conditions of the undisclosed future events.[166] That was the first time when the U.S. openly talked about the political nature of the posed question. During the discussion on the essence of the request, they, like Russia, underlined that there are no obstacles in either treaty law or customary law to the use of nuclear weapons. The U.S., in the second written statement, repeated the same. They answered that the General Assembly's question was almost the same. Although, compared to the WHO, the General Assembly had the right to present a question on the raised issue. Despite this fact, they doubted that the adopted advisory opinion would bring no practical assistance to the General Assembly in dealing with its functions under the charter.[167] Russia presented a similar warning during their first written statement. Nevertheless, the U.S. also repeated the same fears in the second written statement. They still emphasized the vagueness of the formulated question and its political components.[168] Moreover, during the question's substance discussion, they primarily underlined that conventional and customary law were silent towards the prohibition on the use of nuclear weapons. They put forth the idea that the advisory opinion on the mentioned case would bring fruitless implications.[169] As mentioned earlier, the U.S., in comparison to Russia, asked the court to decline the General Assembly's request.[170] On the other hand, Russia answered the General Assembly's formulated question and simultaneously vaguely despised it. Somehow, the U.S. was more accurate and direct towards the posed question.

[164] United Nations Charter. *Supra note* 17. Art. 65.
[165] Legality of the Use by a State of Nuclear Weapons in Armed Conflict. *Supra note* 160, p. 34.
[166] Ibid, p. 14.
[167] Legality of the Threat or Use of Nuclear Weapons. ICJ. Rep., Written Statement of the Government of the United States of America, 20 June 1995. p. 1.
[168] Ibid, p. 4.
[169] Ibid, p. 6-7.
[170] Ibid, p. 48.

After the dissolution of the Soviet Union and the decease of the Cold War, this was the first time when both the great powers simultaneously presented written statements to the cases. The end of the Cold War was vivid because both states shared similar ideas towards the case. Previously, the U.S. and the Soviet Union had almost all situations at odds in their thoughts and views. Interesting was the fact that both countries possess nuclear weapons. Thus, their point of view towards the case was significant. Russia was very assertive on the WHO's posed question, though on the General Assembly's request, they answered with a wide range of arguments. The U.S. was confident in both written statements. They repeatedly underlined the political and abstract nature of the formulated questions that concerned the unknown events of the future.

It was not only the great powers that feared the political nature of the posed questions. The scholars expressed the same thoughts. As Robert F. Turner wrote, the General Assembly question was poorly framed, with the political aspects. The request focused entirely on the legal status of the use of nuclear weapons. Moreover, it had not even tried to show that advice sought to present new limitations in the nuclear realm.[171] In his dissenting opinion, Judge Oda emphasized that the General Assembly's request had a political nature. According to the statement, it was more appropriate for the states to discuss posed questions upon the negotiations in New York or Geneva than in Hague. Moreover, he mentioned that this advisory opinion could damage the authority of the court.[172]

2.3. 2001 – 2010: The Most Scandalous Advisory Opinions of the ICJ

During the mentioned time range, the ICJ adopted two advisory opinions regarding the consequences of the Palestinian wall construction and Kosovo's unilateral declaration of independence compatibility with the international law. The General Assembly was an organ that referred both of the questions to the court. The great powers presented their written statements to both of the mentioned cases.

The reason for The Palestinian wall case initiation was the tense relationship between Israel and Palestine. In 2002, Israeli started to construct a wall not only on its territory but also across the

[171] R. F. Turner. Nuclear Weapons and the World Court: The ICJ's Advisory Opinion and Its Significance for U.S. Strategic Doctrine. International Law Studies, Vol. 72. US, General Books, 2012. p. 323.
[172] Legality of the Threat or Use of Nuclear Weapons. ICJ. Dissenting Opinion of Judge Oda, part II. p. 151.

Palestinian part of the West Bank. Israel explained the construction of the wall with the intent to protect his territory from terrorist attacks. On the other hand, Palestine deemed this action as the unlawful annexation of its territory that would intervene in the Palestinians' right to self-determination. In 2003, General Assembly adopted the resolution, where they demanded from Israel to cease the wall construction processes on the Occupied Palestinian Territory. Finally, in December 2003, the General Assembly refer the question to the court on the legal consequences of the construction of the wall by Israel.[173] In 2004, the court found its jurisdiction to the case and adopted an advisory opinion, despite some states' profound warnings towards the General Assembly's posed question.

In February 2008, Kosovo officially adopted the unilateral declaration of independence. Serbia went against the adopted declaration and made considerable efforts to cease the mentioned process. Therefore, Serbia, among other proposals, asked the General Assembly to refer the question to the court. The General Assembly agreed on that point and requested an advisory opinion from the court regarding this issue. The ICJ, in less than two years, adopted an opinion. It was based chiefly on the Security Council Resolution 1244 and general international law.[174] The states' views diverge on the mentioned case. Finally, the great powers' written statements will shed light on the different thoughts and ideas presented to those two cases.

2.3.1. Russia written statement

Russia presented explanatory written statements to both of the cases. After those two statements, it was vivid that Russia did not share the Soviet Union's attitude towards the advisory function of the court. Compared to the USSR's written communications, Russia's all statements were descriptive, full of arguments and views. Especially the written statement regarding Kosovo's unilateral declaration of independence. They presented forty-three pages long written communication, where they tried to explain the illegality of Kosovo's adopted declaration.

[173] C. Gray. The ICJ Advisory Opinion on Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory. The Cambridge Law Journal, Vol. 63, No. 3. : Cambridge University Press on behalf of Editorial Committee of the Cambridge Law Journal, 2004. p. 527-528.

[174] R. Värk. The Advisory Opinion on Kosovo's Declaration of Independence: Hopes, Disappointments and its Relevance to Crimea. Polish Yearbook of International Law, vol. XXXIV. Warszawa, Institute of Law Studies PAS, Committee on Legal Sciences PAS, 2015. p. 118-119.

Russia on the wall construction case was briefer, compared to their second written statement. They started communication with the explanation of the reasons for their submission. They mentioned article 93 of the U.N Charter. Based on what ipso facto, Russia was a party to the Statute of the ICJ.[175] As Russia underlined in the statement, they abstained from voting during the resolution adoption procedure of the General Assembly. Russia based communication on the significance of their abstention during the voting at the Emergency Special Session of the General Assembly. As they emphasized, the Palestinian-Israeli conflict resolution was not a military solution.[176] Russia tried to determine the importance of the negotiations for the settlement of the existing conflict. As they underlined, it was essential to renew the direct dialogue between Israel and Palestine.[177] Interesting is the fact that during the intercourse, Russia also mentioned the efforts of Palestine against the cease of terrorism in Israel. Moreover, Russia despised the actions taken by Israel. According to their statement, no one doubted the right of Israel to protect its citizens, though this did not provide them the right to seize other states' territories and breach the norms of the humanitarian law. As they wrote, these actions would put in danger the perspective of the emergence of Palestine state.[178] Russia tried to comprehend the motives of the General Assembly resolution. Nevertheless, they deemed this resolution a bad example, as it emphasized that the international community had come to terms with the conflict. Thus, the only solution for Russia to settle the dispute was to stop and reverse the wall construction processes. They also added that in cooperation with the U.N., E.U., and the U.S., they would carry on working on the settlement of the conflict following the Security Council Resolutions.[179] Despite the aforementioned, Russia stood on the position that negotiations were the only option for achieving success in the Palestinian-Israel dispute. Moreover, they emphasized that the court advisory opinion would not harm the negotiation procedures. Besides, they left a hope that the court would consider the points mentioned above carefully.[180]

[175] United Nations Charter. *Supra note* 17. Art. 93.
[176] Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory. ICJ. Rep., Written Statement of the Russian Federation, 29 January 2004. p. 2.
[177] Ibid, p. 3.
[178] Ibid, p. 4.
[179] Ibid, p. 4.
[180] Ibid, p. 5.

This written statement underlined Russia's ambiguity towards the case. The paper evidenced the same attitude towards the General Assembly's posed question on the use of nuclear weapons case. In the presented statement, Russia emphasized that negotiations were the only option to settle the dispute. Despite this fact, they have not insisted court should discuss the case on the merits or not. Their view on this position was ambiguous. Mentioning the fact that Russia, the U.S., the U.N., and the E.U. would try to settle the conflict already emphasized that they were against an advisory opinion. Although, in the end, they have not written about their objection directly. Moreover, Russia tried to remain neutral in the current event. Somehow, their allegations of the wrongfulness of Israel's actions showed their sympathy for Palestine.

On Kosovo's unilateral declaration of the independence case, Russia presented an explanatory written statement, full of arguments and views. As in the Palestinian wall case, Russia began a statement by mentioning their votes on the General Assembly resolution regarding Yugoslavia's sovereignty and territorial integrity and Kosovo's status. Russia emphasized that they voted in favor of the resolution because of their faithfulness in two principles of international law: peaceful settlement of international disputes and the rule of law in international relations. The statement underlined the court's significance and the international community's trust in the judicial procedures of the ICJ.[181] On 12 August 2008, Georgia commenced proceedings against Russia [182] based on Article 22 of the Convention on the Elimination of All Forms of Racial Discrimination.[183] This contentious case was the first judicial proceedings for Russia in the ICJ since 1989. The case did not reach discussions on the merits. However, Russia mentioned the case in the statement as an example of broadening the scope of their acceptance of the court's jurisdiction. Interesting is the fact that the whole introduction of the statement strained to reveal that Russia has enhanced trust in the court's jurisdiction. To demonstrate this, they even presented a statement by Vladimir Putin, in which he stressed the importance of the advisory and contentious jurisdiction of the court in strengthening and developing international norms and principles. As Russia emphasized, the mentioned case concerned three essential principles of modern international law: territorial integrity, sovereignty, and self-determination.

[181] Accordance with international law of the unilateral declaration of independence in respect of Kosovo. ICJ. Rep., Written Statement of the Russian Federation, 16 April 2009. p. 1.
[182] Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation). ICJ. Judgment of 1 April 2011.
[183] International Convention on the Elimination of All Forms of Racial Discrimination. New York 21.12.1950, Entry into force: 4.01.1969. Art.22.

According to their statement, Russia is trying to uphold the three principles mentioned above. They even presented an excerpt from the preamble of the Russian Constitution. And their experience in tackling the issues regarding the right to self-determination. As they wrote, the peoples of Russia exercised the right of self-determination through creating autonomies and republics.[184] Therefore, they believed that other countries should apply the same example to settle the problems of the ethnic communities. Russia emphasized that despite the state's concern about the political nature of the question. They deemed that it was a legal request. Consequently, the court had jurisdiction over the General Assembly's posed question.[185] In its statement, Russia noted down the articles of the U.N. Charter and conventions that enshrined the issues raised. Although, as they mentioned, the main applicable document in the presented situation was the Security Council Resolution 1244.[186] Then they underlined those events, which affected the creation of the resolution. According to Russia, the main event was the NATO military operation against Yugoslavia.[187] Moreover, they talked about the history and objective of the United Nations Interim Administration Mission in Kosovo (UNMIK). With the presence of the mentioned events in the statement, Russia used to present that the Security Council Resolution 1244 was still in force. Based on their perspective, Russia considered principles of international law and Resolution 1244 as reciprocally supportive.[188]

In its written statement, Russia talked about the historical facts that led to the current situation around Kosovo. Russia despised the Ahtisaari Plan,[189] which the Security Council adopted to settle the issues regarding Kosovo's status. According to Russia's statement, the Ahtisaari plan was a vivid example of contradiction to Serbia's territorial integrity. Russia asked an interesting question in the communication that endorsed the actions rendered by Serbia. Russia was egregious about everyone who blamed Serbia for being upset about the Ahtisaari Plan that condemned its sovereignty.[190] Finally, Russia went against the states that deemed Kosovo's secession as the last point for the disintegration of the Socialist Federal Republic of Yugoslavia.

[184] Accordance with international law of the unilateral declaration of independence in respect of Kosovo. *Supra note* 181. p. 1-2.
[185] Ibid, p. 5-6.
[186] Security Council Resolution 1244, 10 June 1999.
[187] Accordance with international law of the unilateral declaration of independence in respect of Kosovo. *Supra note* 181. p. 8.
[188] Ibid, p. 9.
[189] Secretary-General Report. S/2007/168, 26 March 2007.
[190] Accordance with international law of the unilateral declaration of independence in respect of Kosovo. *Supra note* 181. p. 13-14.

As the statement emphasized, this opinion was not correct because of legal, political, and historical reasons. Therefore, they exempted all the connections between the collapse of SFRY and Kosovo's independence.[191] Russia presented facts about the ethnic Serbs rights infringement in Kosovo. Russia used the given point for the depiction of Serbia's non-action, despite the severe attitude towards the ethnic Serbs in Kosovo. As they wrote, Serbia had not used oppression and force in Kosovo.[192] Russia presented Rambouillet Agreement as a vivid example of the fact that since Serbia was a founding state of the FRY, Kosovo was assumed not only to be part of the SFRY but also of Serbia. According to them, the resolution has never mentioned any plausibility of autonomy, territorial integrity, sovereignty, and especially the self-determination of the peoples of Kosovo.[193] To give a more precise overview on the topic, Russia explained the forms of self-determination. Finally, they came up with the idea that Kosovo's case was internal self-determination. Thus, this fact influenced the Council and the states not to use the notion of self-determination in resolution 1244.[194] To enhance their view, Russia summed up that resolution's main aim was to reveal Kosovo as the integral unity of SFRY and Serbia.[195] Interesting is the fact that despite the support of Serbia's rights towards Kosovo, Russia also emphasized that the resolution has not excluded the possibility of Kosovo's independence. According to the statement, the resolution adopted some ways to settle the mentioned dispute, though none of them was a unilateral decision issued by one of the parties to the case. Russia stressed that Resolution 1244 mainly refers to negotiations as a way to resolve the issue.[196] They did not rule out the possibility of Kosovo's independence, although Russia believed that this topic required negotiations between the parties. In a written statement, Russia many times despised the Ahtisaari plan as an agreement that was doomed from the outset, as it held the position of only one side. Thus, Russia approved Serbia's refusal to accept the plan. The statement also criticized the Provisional Institutions of Self-Government (PISG) created based on Resolution 1244. Russia criticized PISG because of its secondary legal nature and limited responsibilities. Therefore, as they mentioned, Kosovo's independence enunciation was outside the scope of PSIG.[197]

[191] Ibid, p. 15-16.
[192] Ibid, p. 14.
[193] Ibid, p. 20-21.
[194] Ibid, p. 33.
[195] Ibid, p. 37.
[196] Ibid, p. 37.
[197] Ibid, p. 26.

Finally, Russia concluded that Kosovo's unilateral declaration of independence was against the Security Council's Resolution 1244. Moreover, it was even against the general principles of international law. According to Russia, the declaration's main objective was the emergence of a new state, though the mentioned fact was against Serbia's sovereignty and territorial integrity. After analyzing the constitutional order, Russia concluded that the people of Kosovo were not considered for self-determination and independence. Russia insisted that all documents proclaimed the same intent regarding Kosovo's self-determination.[198] The statement asked a question about the situation in Kosovo during the unilateral declaration issuance. In a written statement, Russia praised Serbia as a new democratic state that shares the universal values of human rights. Based on this, Russia believed that the situation in Kosovo, when they were an integral part of Serbia, was better than in 1999. According to Russia, the situation in Kosovo during this period was better than before.[199] Thus, the proclamation of Kosovo's unilateral declaration of independence was groundless.

Compared to the Palestinian Wall advisory opinion, Russia in Kosovo's unilateral declaration on independence case was more direct. They revealed sympathies towards Serbia's actions. Russia despised the Ahtisaari Plan and emphasized that the people of Kosovo were an integral part of Serbia. They have not even considered the possibility of Kosovo's independence. The complete written statement underlined Russia's endorsement of Serbia's territorial integrity. As in the Palestinian Wall case, here as well, Russia stressed the importance of negotiations during the dispute. Despite this fact, in Kosovo's unilateral declaration on independence case, Russia already knew the negotiations' results because they have not even thought about Kosovo's independence. As they underlined, Kosovo was part of Serbia, and the declaration of independence was against international law. Interesting is that Russia has clearly shown support and sympathy for the parties to the case for the first time. In the Palestinian Wall case, Russia disregarded the actions rendered by Israel. Although, they have not shown endorsement to Palestine either. In the second case, they based statements on subjective preferences because they wrote many times about their sympathies towards the democratic state of Serbia.

[198] Ibid, p. 39-40.
[199] Ibid, p. 37-38.

2.3.2. U.S. written statements

The United States provided two explanatory written statements during the specified time range. Their communication on the legality of the construction of the wall in occupied Palestine included the annexes. This case was the first time the United States presented some original documents and statements as facts in defense of their views. In case of the unilateral declaration of Kosovo's independence advisory opinion, they submitted a descriptive and factual written statement. However, in these two cases, differences in the views of the great powers did appear. Their thoughts diverge from each other. A more in-depth examination of the written statements of the United States will point out the differences in the views of the great powers.

In the Palestinian Wall case, the U.S., in the beginning, counted down those countries and organizations that put a huge effort to settle the Palestine-Israel dispute[200] Russia mentioned this point in their statement too. As in the previous case regarding the use of nuclear weapons, here as well, the U.S. underlined the political context of the posed question. According to the statement, discussing this case on the merits could cease the peace process and politicize the ICJ. The U.S. often underlined the vagueness of the formulated question. Moreover, they revealed their fears about the circumventions of the advisory opinion into a judicial settlement.[201] During the complete written statement, the U.S. strained to show the importance of the negotiations between the disputed parties. They presented Roadmap as the primary document that talked about the significance of negotiations under the patronage of Quartet. Besides, the U.S. explained the General Assembly's request in the context of the Roadmap implemented peace processes.[202] In the statement, the U.S. presented a comprehensive overview of the Roadmap and its functions. In their view, Roadmap was a document that aimed to provide peace and security between Israel and Palestine and other neighbors. As the U.S. mentioned for the fulfillment of the Roadmap objective, the document suggested the negotiations in good faith between the contested parties.[203] To depict the possible benign outcomes of negotiations, the U.S. presented the example of the Middle East Peace Conference in Madrid in 1991. The written statement mentioned the Declaration of Principles on Interim

[200] Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory. ICJ. Rep., Written Statement of the United States of America, 30 January 2004. p. 3.
[201] Ibid, p. 2.
[202] Ibid, p. 6.
[203] Ibid, p. 7-8.

Self-Government Arrangements (DOP),[204] as the negotiation tool between the parties for the creation of a Palestinian Interim Self-Government Authority. The U.S. underlined that DOP once more mentioned and enhanced the importance of the negotiations for settlement of the given dispute.[205] To reinforce their views on the significance of the negotiations during the peace processes, the U.S. presented the Security Council Resolutions 1397[206] and 1515.[207] They concluded that the Quartet had an opportunity to work together to hold the negotiations and settle the Palestinian-Israeli dispute. Moreover, they claimed that Roadmap was the perfect method to bring peace in that region.[208] The U.S. firmly asserted many times that the court interference in the peace process would bring more harm than advantages. The court's interference had a chance to destroy the objectives and results of the Roadmap. Because of the mentioned above, the U.S. voted against the resolution.[209] As the statement notes, despite the menace to impede the peace processes implemented by the Roadmap, the General Assembly still received the resolution with 90 votes.[210] The United States has repeatedly reminded the court of the primary purpose of advisory jurisdiction. In this way, they tried to persuade the ICJ not to discuss the request of the General Assembly. The U.S. emphasized the importance of the state's consent during the advisory jurisdiction of the court. According to the statement, the advisory opinion on Western Sahara [211]showed that, in some cases, lack of consent prevented a case from being considered by the court.[212] The U.S. presented these arguments to defend their views regarding the significance of the negotiations. As they underlined, there already occurred some negotiations between the disputed parties. Thus, the court lacked the competence to hear the case. The U.S. even feared the consequences of the presented oral and written statements during the proceeding. They even reminded the court that the hearing of unordinary complex and controversial cases could harm the image of the advisory function of the court.[213] As the Quartet member, the U.S. emphasized the importance of resorting to the bargaining table instead of adopting the advisory opinion. They even despised the posed question, because it had

[204] Declaration of Principles on Interim Self-Government Arrangements. Washington, D.C. 13.08.1993.
[205] Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory. *Supra note* 200. p. 9-11.
[206] Security Council Resolution 1397, 12 March 2002.
[207] Security Council Resolution 1515, 19 November 2003.
[208] Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory. *Supra note* 200. p. 13-15.
[209] Ibid, p. 20.
[210] Ibid, p. 17.
[211] Western Sahara. ICJ. Advisory Opinion 16 October 1975
[212] Ibid, p. 18.
[213] Ibid, p. 22.

not encompassed many other relevant issues of the case. Although, if the court decided to consider the case, the United States suggested paying attention to two key points of the peace processes. First of all, to the principle of the importance of negotiations to settle the disputes. Secondly, to looking forward to successful peace processes. The U.S. emphasized the significance of an interim period for the fulfillment of security liabilities. According to the statement, the referral resolution should preserve those two key elements and did not interfere with either of them.[214] The U.S. believed that the discussion of the case would bring more difficulties. As they wrote, any expression on the permanent status issues would worse the political situation between the parties. They asked the court not to touch any terms of the previously agreed detailed security arrangements because it could diminish the prosperity in reaching the cease of violence and impede the negotiations between the parties. Finally, for the avoidance of those misunderstandings, the U.S. suggested the court to use its discretionary power and decline the request of the General Assembly.[215]

In comparison to Russia, the U.S. directly despised the General Assembly's posed question. They tried to emphasize the political nature of the question. They asked the court not to discuss the case because it was the basis for negotiations between the parties. The U.S. many times underlined the possible results of the advisory opinion. As they mentioned, this opinion would impede the peace processes implemented by Roadmap. Russia was not directly against the case discussion on the merits. Although, the U.S. refused the usefulness of the case hearing. They asked the court to use the discretionary power and decline the case. At one point, the great powers still agreed. Russia and the U.S. emphasized that negotiations were the only ways to settle the Palestine-Israeli conflict. Besides, compared to Russia, the U.S. has not revealed disregard towards Israel's actions. Moreover, they mostly tried to watch the case from Israel's perspective. Finally, the court still found jurisdiction and adopted an advisory opinion on the legal consequences of the wall construction in occupied Palestine territory, despite the U.S.'s severe criticism in the written statement.

If the great powers agreed on some points in the Palestine wall case, then their views diverged in Kosovo's unilateral declaration of independence. The U.S. presented an explanatory written

[214] Ibid, p. 23.
[215] Ibid, p. 31-32.

statement. They even added appendixes to the statement that made communication more affluent. Interesting is the fact that the U.S. as well submitted its written comments to the case. The given paper will explore both communications and mostly will focus on the comments of the U.S. According to the statement, the U.S. hoped that the settlement of the case would calm the situation in the Balkans and close a chapter in the history of the region. They even underlined the robust bond between Serbia and the U.S. Moreover, the endeavor of the United States to assist Serbia to improve its international status and economy. The U.S. underlined that the court's advisory opinion could bring stability and protection of human rights in this region.[216] Therefore, they asked the court to consider the General Assembly's posed question. The U.S. emphasized that Kosovo's unilateral declaration of independence falls under the stipulations of Resolution 1244. Thus, it was according to international law.[217] The more comprehensive tension towards the case would present the written comment presented by the United States. In the written comment, the U.S. started to be more assertive. According to the comment, Kosovo's peaceful declaration was necessary to stabilize the situation. The U.S. cast doubted all the presented written statements that mentioned the wrongfulness of Kosovo's unilateral declaration.[218] If Russia refused any chances of Kosovo's independence, then the United States vice versa defended Kosovo by mentioning its past as the state that increased bilateral and multilateral endorsement. The U.S. once more noted down those events and reasons, which influenced Kosovo's unilateral declaration. As they wrote, Belgrade illegally constrained Kosovo its autonomy. Moreover, the terrifying events that occurred between Serbia and Kosovo made mutual political space between the parties impossible.[219] To defend Kosovo's separation from Serbia, the U.S. presented the fact that Kosovo, under the U.N. supervision, managed its daily activities without the guidance of Serbia for ten years.[220] The United States even presented the Special Envoy's conclusion, emphasizing Kosovo's independence as the only solution to settle the conflict. They offered the court to consider the case and adopt an advisory opinion on the compatibility of Kosovo's unilateral declaration with international law. According to the comment, Kosovo has not violated any principles of international law. Vice

[216] Accordance with international law of the unilateral declaration of independence in respect of Kosovo. ICJ. Rep., Written Statement of the United States of America, 17 April 2009. p. 1-3.
[217] Ibid, p. 90.
[218] Accordance with international law of the unilateral declaration of independence in respect of Kosovo. ICJ. Rep., Written Comment of the United States of America, 17 July 2009. p. 1.
[219] Ibid, p. 1.
[220] Ibid, p. 2.

versa, the declaration was a result of long-term negotiations and consultations under the auspices of the United Nations.[221] The United States presented its history as an example when declaring independence completed the colonial past of the country.[222] With this instance, they strained to show the lawfulness of Kosovo's adopted declaration. The U.S. put forth the idea that the admission of Kosovo in the International Monetary Fund and World Bank Group was an acknowledgment of Kosovo's independence.[223] Moreover, they often presented the numbers of the states that recognized Kosovo's independence. The depiction of the growing numbers of states emphasized the widespread endorsement and acceptance of Kosovo. The United States also stressed that the question is posed narrowly, and the court's decision will be only within the framework of this request.[224] Interesting is the fact that the United States mentioned in the comment Serbia and its supporters. In the supporters, the United States meant Russia. As it was vivid from Russia's written statement, they endorsed Serbia. During the complete comment, the U.S. kept mentioning Serbia and its supporters. According to the communication, the noted member states initiated the request for the advisory opinion, and the claim of Serbia and its allies about the General Assembly's wish to submit a question for an opinion was false. In the written statement and the comment, the U.S. emphasized that international law did not have any regulations regarding the states' unilateral declarations.[225] They presented the former Yugoslavia as a vivid example of this. As they noted, the republics during the dissolution process adopted the declarations of independence, though they were not a violation of international law. Thus, the same measure would apply to Kosovo's unilateral declaration.[226] According to the U.S.'s comment, all the documents that Serbia and other allies linked included the flaws because they were not the instant matter to the dispute. The United States noted that in Serbia's written statement mentioned documents did not contain any stipulations on forbiddance to declare independence unilaterally.[227] The U.S. emphasized that even Serbia's supporters mentioned the existence of external self-determination in international law. As the footnote, they added the small excerpt from Russia's written statement, where the state talked about the existence of some types of self-determination. The comment hoped that the court

[221] Ibid, p. 4.
[222] Ibid, p. 5.
[223] Ibid, p. 6.
[224] Ibid, p. 10.
[225] Ibid, p. 11.
[226] Ibid, p. 13.
[227] Ibid, p. 15.

would not address the self-determination contours in an advisory opinion.[228] The United States also questioned Serbia and its supporters' notes about the compatibility of the declaration with Resolution 1244. According to the United States, the Resolution had not precluded this possibility. Thus, Serbia and its supporters erred in their conclusions. Moreover, the U.S. emphasized in the written statement that resolution 1244 did not even include Serbia's requirements to comply with a future status of Kosovo.[229] The United States also questioned Serbia's assertion about the equivalence of the words settlement' and 'agreement' in resolution 1244. As they wrote, this understanding was wrong for some reasons. Firstly, the resolution makers did not write the word agreement in the document. Also, the United Nations have not adopted the right of veto to Serbia. The U.S. refused the possibility of Kosovo's actions in bad faith. According to them, none of the participants instead of Serbia emphasized that Kosovo presented positions in bad faith during the negotiations.[230] Serbia argued that Kosovo's unilateral declaration was *ultra vires* actions following international law and UNMIK regulation. Although the United States underlined that the declaration was the call of the huge number of people of Kosovo, and UNMIK's competence was to operate not as international but domestic law. Thus, the declaration was not against international law.[231] Finally, the U.S. concluded that if the court chooses to give an advisory opinion on the posed question of the General Assembly, then it should rule that Kosovo's unilateral declaration of independence was following international law.[232]

In comparison to Russia, the U.S. did not support Serbia in the mentioned case. They even often mentioned Russia's endorsement of Serbia in the communication. The U.S. emphasized how important was Kosovo's independence. As they wrote, this event finished Yugoslavia's crisis. Russia even denied the people of Kosovo's right to self-determination. Although, the U.S. supported Kosovo's right to self-determination. They presented many arguments and facts to defend this idea. Serbia was an initiator of these questions. Consequently, Russia supported the adoption of the advisory opinion. Somehow, the U.S. went against and mentioned that it was useless to adopt an opinion on the presented request. Because the unilateral declaration was

[228] Ibid, p. 21.
[229] Ibid, p. 24.
[230] Ibid, p. 32-33.
[231] Ibid, p. 37.
[232] Ibid, p. 46.

according to international law. All these facts from the great powers' written statements and comments underlined the tense relationship between them.

Some scholars also underlined the political nature of the posed questions in both cases. Christine Gray and Alexander Orakhelashvili also mentioned the political character of the Palestine Wall Construction advisory opinion. As Christine Gray wrote, it was apparent that the court still exercised its jurisdiction despite the political aspects of the posed question.[233] Alexander Orakhelashvili added that the Palestine Wall Construction case included many exciting elements, although one of the major things was the political context of the case.[234] In Kosovo's Unilateral Declaration of Independence case, Ralph Wilde emphasized the existed political tension over the advisory opinion. The scholar even mentioned the political significance of the right to self-determination.[235] The case reflected the same issues. Elena Cirkovic also claimed in her work about the political nature of the posed question. As she underlined, generally, the case raised both legal and political aspects of the problem.[236]

2.4. 2010 - 2020: Advisory Function of the Court Nowadays

In ten years, the court issued two advisory opinions. The great powers submitted written statements only on the Chagos Archipelago case. After the collapse of the Soviet Union, the number of posed questions for advisory opinions decreased. The last case that the court discussed was regarding the issues of the Chagos Archipelago. This case one more time emphasized the problems and results of the decolonization processes. As the dependent colony of Mauritius, the Chagos Archipelago was under the control of the U.K. government for more than 150 years. After the protracted negotiations, Mauritius acquired independence in 1968. The U.K. cut out the Chagos Archipelago from Mauritius. Thus, they created a novel colony with the name British Indian Ocean Territory (BIOT). The U.K. paid £3 compensation to Mauritius for the Chagos Archipelago. After this period, the note between the U.K. and the U.S.

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[233] C. Gray. *Supra note* 173. p. 528-529.

[234] A. Orakhelashvili. International Public Order and the International Court's Advisory Opinion on Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory. Archiv des Völkerrechts, 43. Bd., 2. H. Germany, Mohr Siebeck GmbH & Co. KG, 2005. p. 240.

[235] R. Wilde. Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo. The American Journal of International Law, Vol. 105, No. 2. Washington, DC, American Society of International Law, 2011. p. 306.

[236] E. Cirkovic. An Analysis of the ICJ Advisory Opinion on Kosovo's Unilateral Declaration of Independence. German Law Journal, Vol. 11. Germany, German Law Journal GbR, 2010. p. 899.

made the Chagos Archipelago the base for military purposes. Especially its major island Diego Garsia. Since 1980, at the General Assembly meeting, the Mauritius government claimed rights on the Chagos Archipelago. During the negotiations between the parties, U.K. agreed to return the island if it no longer was demanded for protection purposes. Those events affected the General Assembly to adopt a resolution about the request for an advisory opinion from the court. Ninety-Four member states of the U.N. voted in favor of this resolution, 15 of them went against, and 65 abstained from voting.[237]

2.4.1. Russia written statement

Russia presented a modest written statement to the Chagos Archipelago separation case. Compared to Kosovo's Unilateral Declaration of Independence and Palestinian Wall cases, the mentioned communication was short and less explanatory. Russia did not mention any robust arguments for the defense of their views.

Russia started a written statement mentioning their abstention during the voting process on the adoption of resolution 71/292.[238] Despite this fact, they presented a statement to emphasize some significant international law issues, which the mentioned case raised. Russia, in the communication, noted down the issues regarding the mandate and role of the principal U.N. organs, division of powers between those organs, the principles of advisory function of the court, and matter of correlation during the territorial disputes. Russia underlined that the General Assembly has a broad range of rights, though it lacked competence in determining the legal status of territories, other than the issues regarding the Trusteeship system. Interesting is the fact that Russia, in the written statement, emphasized the importance of the self-determination of peoples as the cornerstone principle of international law.[239] Somehow, they rigorously refused to admit Kosovo's right to self-determination. As they wrote, people of Kosovo were not designated for the use of the mentioned right. Russia showed itself as the biggest supporter of the self-determination principle during the decolonization processes. As they emphasized, Russia made an essential contribution to African and Asian peoples when

[237] L. Jeffery. The International Court of Justice: Advisory Opinion on the Chagos Archipelago. Anthropology Today, Vol. 35, Issue 1. US, Royal Anthropological Institute, 2019. p. 24.
[238] General Assembly resolution. A/RES/71/292, 22 June 2017.
[239] Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965. ICJ. Rep., Written Statement of the Russian Federation, 27 February 2018. p. 3-4.

they struggled for independence.[240] The written statement mentioned Kosovo's unilateral declaration of independence case as the example when the court emphasized that, despite jurisdiction, the court still has a discretionary power to decline the question.[241] Russia wrote that assertion on the General Assembly's *ultra vires* actions was useless. They underlined that states many times raised this issue. Although, the court still decided to render an advisory opinion.[242] This sentence emphasized Russia's view towards the posed question. It seems like they deemed the General Assembly's action *ultra vires*. Nevertheless, they did not assert this fact. Based on the old cases' experience. They considered that the court would not examine their assertion on this point. Russia underlined that during the last period, the United Nations organs' competencies collided, which rendered a destabilization of the international legal order.[243] They even presented the USSR example as a vivid depiction of the country that actively fought to establish the self-determination principle. Russia mentioned that the mandate of self-determination in the decolonization processes had the General Assembly. As proof of this fact, they presented the resolutions, which the Assembly adopted regarding this issue. They even mentioned the significance of the General Assembly's subsidiary organs and the conventions that regulated the problems of decolonization.[244] For the first time in a written statement, Russia mentioned other advisory opinions adopted by the court. Finally, Russia concluded that the Chagos Archipelagos case was arduous because it was not just a dispute. The court would deal with the bilateral territorial dispute. Therefore, Russia emphasized that in this case, the court should be careful during the assessment of the circumstances for each request. Moreover, the General Assembly's competence is the ground of the court's jurisdiction. Thus, Russia recommended to the court to examine the General Assembly's mandate attentively.[245]

As in other written statements, Russia's written statement lacked any direct answers to the posed question. Their communication mentioned just some points of the decolonization period. They did not talk about the issues of the request. They strained to present their own and the USSR endeavors in the long processes of decolonization. Moreover, they named themselves as the strong defenders of the principle of self-determination. Although, the Kosovo case underlined

[240] Ibid, p. 4.
[241] Ibid, p. 6.
[242] Ibid, p. 7.
[243] Ibid, p. 7.
[244] Ibid, p. 9.
[245] Ibid, p. 12-13.

the different views of Russia towards the right of self-determination. Interesting is the fact that Russia only ambiguously reviewed the jurisdiction of the court in this case. For some reason, in the other four written statements, they did not directly but still answered the posed questions, regardless of whether they were against the jurisdiction of the court or not.

2.4.2. U.S. written statement

The U.S. presented an explanatory written statement to the case. They described the case and, with the arguments and facts, tried to defend their views. Generally, after the dissolution of the Soviet Union, the U.S. almost in every case despised the General Assembly's posed questions. The use of Nuclear Weapon, Palestine Wall Construction, and the Chagos Archipelagos cases are the best instances of the fact mentioned above. The overview of the written statement on the Chagos Archipelagos case will render a more comprehensive look into the U.S. point of view.

In the introduction of the written statement, the U.S. mentioned their vote during the adoption of the resolution. As they emphasized, their vote went against the resolution because they believed that the case was regarding the bilateral territorial dispute. They even raised issues about the consent of the parties during the court's advisory jurisdiction. The U.S.'s belief in the inappropriate subject of the advisory opinion influenced their negative vote during the adoption of the resolution.[246] They deemed that the advisory function of the court was not the place for the settlement of the dispute between the parties. To defend its point of view, the U.S. presented a brief overview of the history of British patronage over Mauritius and the Chagos archipelagos. As the statement notes, the issues commenced after 1968, when Mauritius acquired independence.[247] The U.S. even mentioned periods when Mauritius made territorial claims against the U.K. on BIOT. As they underlined, the U.K. was the sovereign state over BIOT. Thus, the U.S. encouraged the parties to settle the dispute on a bilateral basis. In this way, the United States emphasized its role in the dispute settlement processes. Mauritius once tried to bring a contentious case before the court. Although, the U.K. declined to give consent and preferred bilateral negotiations to settle this problem.[248] According to the statement, Mauritius's

[246] Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965. ICJ. Rep., Written Statement of the United States of America, 15 May 2018. p. 1.
[247] Ibid, p. 12-13.
[248] Ibid, p. 15-16.

request for an advisory opinion promoted its sovereignty claim. Moreover, the U.S. emphasized that the presented two questions before the court were vivid examples of the aforementioned information. The United States assessed the questions and concluded that raised issues were the basis of the bilateral territorial dispute regarding sovereignty. The U.S. underlined that even most voters understood that this resolution was an attempt to settle the bilateral dispute regarding sovereignty.[249] The statement mentioned that those who abstained and voted against the resolution stressed the significance of a fundamental principle of international law, the importance of consent during a judicial settlement.[250] The U.S. was interested in the court's future actions. Meticulously, how could the court exercise its advisory function without bypassing the fundamental principle of consent. The statement even covered the importance of the "any legal question" notion. The statement even reflected the period of PCIJ. To be more precise about the consent issues upon the PCIJ advisory opinions. The U.S. presented many examples from other advisory opinions of the court. They mentioned Eastern Carelia's advisory opinion. This opinion states' often mentioned in their written statements, as the example of the importance of the consent during the advisory jurisdiction. Moreover, they noted Palestinian Wall Construction, Interpretation of Peace treaties, and Western Sahara cases, where the advisory opinions reflected a similar issue regarding the consent.[251] The U.S. even questioned the compatibility of the judicial character of the court with the response to the posed questions. The statement firmly asserted that the request disguised the central core of the problem, specifically a bilateral territorial dispute between the U.K. and Mauritius over the Chagos Archipelagos. The U.S. stressed that the critical point of this case was that the General Assembly understood the essence of the matter. Although, they still adopted a resolution and referred the question to the court. The written statement noted that the discussion of the case about the territorial disputes, where the establishment of the boundaries appeared fifty years ago, would bring difficulties to the court.[252] As the U.S. wrote, this could open the door to many cases where the party's consent is absent. According to the statement, the mentioned events could lead to the settlement of disputes via the advisory function of the court. Finally, the U.S. concluded that they asked the court not to exercise jurisdiction over the Chagos Archipelagos case for the defense of the court's judicial system integrity.[253]

[249] Ibid, p. 6.
[250] Ibid, p. 14.
[251] Ibid, p. 7-9.
[252] Ibid, p. 34.
[253] Ibid, p. 40.

The United States, compared to Russia, was more assertive and direct while expressing views. They already had an interest in this case because of the bilateral agreement with the U.K. This deal between the U.K. and the U.S. rendered the Chagos Archipelagos use for military basis purposes. Thus, the U.S. had strong reasons to despise the posed questions. They firmly claimed that the discussion of the case could bring the relinquishing of the line between the contentious and advisory jurisdictions of the court. Russia was more ease with this case. They emphasized that they deemed the General Assembly's posed question as an action of *ultra vires.* Although, because of the court's past, they did not even assert this point. On the other hand, the U.S. refused the court's jurisdiction in the mentioned case. Thus, the great powers had almost the same views. Nevertheless, the U.S. was more direct. This case once more underlined the political tensions and sympathies between the states. If before Russia allied with Serbia, now U.S. strained to protect the U.K. position in the Chagos Archipelagos case.

CONCLUSION

The objective of the presented paper was to assess and determine the political nature of the advisory jurisdiction of the International Court of Justice, based on the written statements submitted by the great powers, the USSR/Russia and the U.S.

The first research question aimed to analyze the essence of the advisory jurisdiction of the court. Besides, to determine the importance of the written statements. For these reasons, the thesis first examined the historical overview of the advisory jurisdiction and the existing issues regarding this function even during the PCIJ period. The problems associated with the parties' consent, conversion of advisory jurisdiction into a judicial settlement, and the political nature of the posed questions rendered the diminishing of the authority of the PCIJ's advisory function. Despite lengthy discussions, the founding members of the ICJ granted the court the advisory jurisdiction. Although, they narrowed the understanding of the posed question to the 'any legal question.' This phrase underlined the founding members' wariness not to make the same mistakes as they rendered with the PCIJ's advisory function. From 1948 to 2021, the ICJ adopted twenty-seven advisory opinions. Some of them were regarding the organization's internal problems. Others were the issues with broad jurisdiction. The court declined to answer the posed question only in one case. Other requests the court-approved to discuss on the merits. The thesis aimed to study the principle of amicus curiae. The national legal systems actively harness this principle. In the international law field, the ICJ uses this principle during the examination of its advisory competence. Therefore, the thesis evolved around those written statements that the USSR/Russia and the U.S. submitted as the amicus curiae.

The second research question looked at the written statements that the great powers presented to the advisory opinions. In this way, the paper aimed to determine the attitude of the USSR/Russia and the U.S. towards the advisory jurisdiction of the court. Firstly, the research examined the written statements of the U.S. and the USSR. Before the dissolution of the Soviet Union, the great powers presented written communications simultaneously on the seven cases. The study of those written statements emphasized the Cold War's strong influence on the states' communications. The USSR often tried to diminish the court's competence to discuss the posed questions on the merits. Their written statements lacked explanations and facts. Primarily, this was vivid during 1948-1950. On the other three advisory opinions, the USSR submitted short

written communications, where they firmly asserted the court's lack of jurisdiction. In the "Competence of the General Assembly for the Admission of a State to the United Nations" case, they mentioned the political nature of the posed question for the first time. During 1951 – 1960, the USSR not totally but still moderated its severe attitude towards the advisory function of the court. "Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide" was the most scandalous case upon this period. If the USSR before underlined lack of jurisdiction of the court and the problems of *ultra vires*. On the Genocide convention advisory opinion, they, for the first time, answered the posed question. Their written statement still lacked the explanatory part. Although, their altered ratio towards the advisory jurisdiction of the court was apparent. The 1961 – 1989 period revealed that the USSR started to use the advisory function of the court as the place for expressing their point of view. The "Certain Expenses of the United Nations" case was a vivid example of the USSR's altered attitude. The Soviet Union presented an explanatory and informative written statement for the first time.

On the other hand, in comparison to the USSR, the U.S. always expressed its views broadly. They presented many arguments and ideas in their written statements that they submitted to those seven advisory opinions. They mostly tried to show gratitude towards the advisory jurisdiction of the court. Although, the fact of the existence of the Cold War has never vanished. Before the dissolution of the Soviet Union, the states' views diverge from each other in almost every case. The Cold War's influence was also apparent in "Application for Review of Judgment No. 333 of the United Nations Administrative Tribunal" advisory opinion. The U.S., even from the beginning, understood the objective of the concept of amicus curiae. As a result, they in every communication strained to show their ideas and views directly and used the court's advisory function as the base of expressing their political views. The USSR started to do the same only at the end of their existence. Although, in 1991, the Soviet Union collapsed.

After the dissolution of the USSR, Russia claimed to be the successor of the Soviet Union. Consequently, Russia acquired the place of the USSR in the U.N. and took a seat as a permanent member of the Security Council. From 1991 until today, the Russian Federation submitted written statements on five advisory opinions. All of the mentioned five cases were a significant source of discussion. These were the advisory opinions where the great powers often expressed their fears about the political nature of the posed questions. The best example of the mentioned

was the "Legality of the Threat or Use of Nuclear Weapons" cases. These were cases when both states shared the same views and ideas about the raised issue. Russia carried on the USSR's altered attitude towards the advisory jurisdiction of the court. Most of their communications were quite explanatory and informative. The most notable advisory opinions, where Russia submitted written statements, were the 'Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory" and "Accordance with international law of the unilateral declaration of independence in respect of Kosovo" cases. After the scandalous case regarding nuclear weapons, the court adopted another two advisory opinions on complex topics. The Russian Federation in Palestine Wall Construction case not directly but expressed despise towards Israel's actions. Although, in Kosovo's Unilateral Declaration of Independence advisory opinion, Russia firmly asserted its sympathies towards Serbia. They strained to show with all the nuance facts that the people of Kosovo were not determined for self-determination. Interesting is the fact that all the Russian federation's written statements experienced ambiguity. Their communication lacked proper and robust assertions that could reveal Russia's concluded views towards the cases. Solely, in Kosovo's case, they were more or less direct in their statement.

In comparison to the Russian Federation, the U.S. was more direct in its written communications. During the Cold War period, the United States has not doubted the nature of the posed questions. Although, all the new five U.S. statements differed from the old communications of the state. They refused the court's jurisdiction in all the cases mentioned above. Even in Kosovo's Unilateral Declaration of Independence advisory opinion, they emphasized that everything was evident regarding the declaration. Therefore, the court should decline the request for an advisory opinion. In most cases, the United States underlined the problem of the political question doctrine. Moreover, in Kosovo's Unilateral Declaration case, they mentioned Russia as a supporter of Serbia. The U.S. used this link specifically to show the Russian Federation's preferences. Although, the United States revealed sympathies towards Israel during the Palestine Wall Construction case. Nevertheless, most notably, the U.S. showed sympathies towards the U.K. in the "Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965"' advisory opinion. Despite the completion of the Cold War period, the rival ratio between the great powers is vivid even today. The mentioned

advisory opinions underlined that both parties used the written statements as the political platform for expressing views and preferences.

The third research question is more complex. It determines the main aim of the presented thesis to determine the nature of the advisory function of the court, based on the great powers' written statements. The examination of the great powers' communications distinguished that states are using the advisory function of the court as the field for political intercourse. The very aim of the advisory jurisdiction of the court is legal. It should serve as a tool for international law interpretation. Article 96(a) of the United Nations Charter claims the same. Although, the experience of the PCIJ showed that sometimes this function serves as a political basis of the court. Unfortunately, in the written statements, the great powers often raised the same problem. They actively asserted the political nature of some posed questions. Significantly, the last cases adopted by the ICJ proved the same fact. The Use of Nuclear Weapons, the Palestine Wall Construction, Kosovo's Unilateral Declaration of Independence, and the Chagos Archipelagos cases revealed fears that the court uses the advisory function as a political tool. The Chagos Archipelagos case vividly showed that the threat of converting the court's advisory jurisdiction into a judicial settlement was real. The same problem was displayed in the Palestinian Wall Construction case. In both of these advisory opinions, the states harshly discussed the political nature of the posed questions. Although, the court still adopted the advisory opinions. Especially, the U.S. despised the mentioned cases. Even the dissent statements of the judges underlined that fear of the political nature of the advisory function exists in the internal environment of the court. The best example of this was the dissent opinion presented by Judge Oda to the nuclear weapons case. The scholars also revealed their fears about the mentioned problem.

The examination of the written statements and the PCIJ's past gave food for thoughts about the political nature of the court. The ICJ often underlined that some posed questions included political aspects. Somehow, the main aim of the requests was legal. Based on this, they adopted the advisory opinions. The mentioned explanation of the court is not enough to determine that the advisory function is not a political tool. The written statements of the great powers showed that threats for the authority and image of the court are real. The mentioning of the fact by the Russian Federation in the Chagos Archipelagos case that they deemed the posed question as to

the General Assembly's *ultra vires* action. Although, they did not assert this fact. Because of the rejection of this idea by the court in every other case. The problem is that the political nature of the advisory function of the PCIJ determined the loss of faith of the states in the given function of the court. The written statements of the great powers underlined that the fears about the deterioration of the court's image are possible. Significantly, U.S. mentioned this idea in communications. The challenge is to avoid the same mistakes that the PCIJ made during its existence with the advisory function of the court.

The examination of the great powers' written statements by the paper exposed that the states use the court's advisory jurisdiction as the political platform. The analysis of the communications submitted during the Cold War period and after proved the same. Based on these written statements, the research concludes that the advisory jurisdiction serves as a political function of the court.

ABBREVIATIONS

U.N.	United Nations
USSR	Union of Soviet Socialist Republics
U.S.	United States
U.K.	United Kingdom
PCIJ	Permanent Court of International Justice
ICJ	International Court of Justice
ECOSOC	United Nations Economic and Social Council
WHO	World Health Organization
ONUC	United Nations Operation in the Congo
UNEF	United Nations Emergency Force
RSFSR	Russian Soviet Federative Socialist Republic
CIS	Commonwealth of Independent States
P5	Permanent five
ILO	International Labour Organization
E.U.	European Union
NATO	North Atlantic Treaty Organization
UNMIK	United Nations Interim Administration Mission in Kosovo
SFRY	Socialist Federal Republic of Yugoslavia
FRY	Former Republic of Yugoslavia
PISG	Provisional Institutions of Self-Government
DOP	Declaration of Principles
BIOT	British Indian Ocean Territory

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