



DISPUTES SETTLEMENT PROCEDURE UNDER THE INTERNATIONAL COURT OF JUSTICE

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ABSTRACT

The International Court of Justice (ICJ), often referred to as the World Court, plays a crucial role in the maintenance of international peace and security. This paper examines the historical background, jurisdiction, procedures, and impact of the ICJ on the international legal system. Additionally, it analyses notable cases and the effects of ICJ decisions on International law.

Keywords:

Statute of the International Court of Justice, Charter of United Nations, Rules of Court (1978) Contentious Jurisdiction, Advisory Jurisdiction, Dispute Resolve, Sovereignty, Immunity and Privilege.

INTRODUCTION

The International Court of Justice (ICJ) was established on June 26, 1945. ICJ plays a crucial role in the international legal system. It is the principal judicial organ of the United Nations and was created under the Charter of the United Nations, established to settle legal disputes between Sovereign States. It is a global organization formed in the aftermath of World War II, with the aim of fostering international cooperation and maintaining peace.

BRIEF HISTORY OF THE ICJ

The International Court of Justice (ICJ) is the successor of the Permanent Court of International Justice (PCIJ) created after the First World War.¹ Due to the Second World War in 1939, the work of PCIJ was halted, and Allied forces gave a statement regarding the future of PCIJ. These statements made it clear that after the Second World War new international judicial organization would be established which would replace the PCIJ established under the League of Nations. Atlantic Charter (1941) was the first step towards the establishment of ICJ after the Washington Declaration on General Nations (1 Jan 1942) and most importantly, the Four Nations Declaration on General Security issued in Moscow (the "Moscow Declaration") by the United States, the United Kingdom, the Union of Soviet Socialist Republics and China on 30 October 1943.² An expensive diplomatic work from 1943 to 1945 resulted in the establishment of an international organization that would include a global court of justice. 44 State's jurists' committee came together for a meeting in April 1945 in Washington. G.H. Hackworth was the chairman of this committee. This Organization was based on the principle of the sovereign equality of all peace-loving States and was open for membership to all such states. The United States was entrusted with preparing a draft Statute for the future International Court of Justice, for submission to the San Francisco Conference, which was meeting from April to June 1945 to draw up the United Nations Charter. The Charter of the United Nations was adopted on June 26, 1945, in San Francisco, California. The draft was not completely new it was based on the Statute of the PCIJ.³ The urgency of creating a mechanism that would facilitate the peaceful resolution of disputes between states, thereby averting the catastrophic consequences of armed conflict. With its seat in The Hague,

¹ Covenant of the League of Nations, Article XIV.

² Juan Carlos Sainz-Borgo, "Latin America and the International Court of Justice" 88 Available at https://springer.duelibrary.in/content/pdf/10.1007/978-3-030-21974-1_5.pdf?pdf=core visited on 6 August 2023.

³ Richard Falk, "The Role Of The International Court Of Justice" *Journal of International Affairs* 259 (1984).



Netherlands, the ICJ commenced its operations in April 1946, marked the initiation of a new era in the adjudication of international disputes. Since its inception, the Court has been instrumental in upholding the principles of justice, legality, and the rule of law on the international stage.¹

FUNCTIONS OF THE ICJ

The International Court of Justice (ICJ) stands as a beacon of hope for the peaceful settlement of international disputes, embodying the collective commitment of the global community to the principles enshrined in the United Nations Charter. The International Court of Justice bases its work on two principles⁴ stated in the United Nations Charter, the inclusion of the members of the organization and the mandate to comply with the judgments of the Court.

Dispute resolution is the primary function of ICJ and states can seek legal remedies for disputes arising under international law. This encompasses a wide array of matters, ranging from territorial disputes and questions of state responsibility to issues concerning the interpretation and application of international treaties.

In fulfilling its mandate, the ICJ plays a multifaceted role. It serves as an adjudicative body, rendering binding judgments based on the principles of international law. The ICJ plays an important role in resolving legal disputes between states through legal means. Furthermore, the ICJ provides an advisory opinion, which is a non-binding opinion but carries significant legal weight referred to by UN organs and specialized agencies.⁵ Interpreting of Treaties and agreements is also one of the main functions of ICJ. Its decisions and advisory opinions carry profound legal and political implications, setting vital precedents that guide the conduct of states and international actors.⁶ Through this process, especially by establishing precedents, the Court contributes to the development and refinement of customary international law. Moreover, the ICJ provides a common platform for states to resolve their disputes through legal means rather than resorting to force, it maintains international peace and security, a core objective of the United Nations. It is a vital component of the global machinery for peace and justice, exemplifying the enduring commitment of nations to the principles of the United Nations.

JURISDICTION OF THE ICJ

For the jurisdiction of ICJ over a case, it is required that the states involved in the dispute must first give consent to the jurisdiction of ICJ. The jurisdiction of the International Court of Justice (ICJ) can be categorized into two main types: contentious jurisdiction and advisory jurisdiction.

Contentious Jurisdiction

The legal disputes between states are submitted to the ICJ for adjudication and The Court exercises its contentious jurisdiction based on the consent of the parties involved.⁷ This consent can be provided through various means, including special agreements, compromissory clauses in a treaty, optional clause declaration or by accepting the compulsory jurisdiction of the ICJ. It is important to note that the Court's jurisdiction in contentious cases is binding and its decisions are legally enforceable.

Compulsory Jurisdiction

⁴ Charter of United Nations, 1945 Article 93 and Article 94.

⁵ Wolfgang Friedmann, "The International Court of Justice and the Evolution of International Law" 314 Available at <https://www.jstor.org/stable/40797413> visited on 5 August 2023.

⁶ Joan E. Donoghue, "The Effectiveness of the International Court of Justice", *American Society of International Law*, Vol. 108, 116 (2014),

⁷ Leo Gross, "Review of the Role of the International Court of Justice" *The American Journal of International Law*, Jul., 1972, Vol. 66, No. 3 487 (Jul., 1972)



Compulsory jurisdiction is a form of jurisdiction that states parties to the ICJ Statute automatically accept. Article 36(2) of the ICJ Statute outlines the conditions under which states are bound by the Court's decisions:⁸

“The states parties to the present Statute may at any time declare that they recognize as compulsory ipso facto and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning:

- a. the interpretation of a treaty;
- b. any question of international law;
- c. the existence of any fact which, if established, would constitute a breach of an international obligation;
- d. the nature or extent of the reparation to be made for the breach of an international obligation”.

States accepting this form of jurisdiction are bound to submit to the ICJ's authority in cases falling within these specified categories.⁹

Optional Clause Declaration

The optional clause declaration is another means by which states can accept the jurisdiction of the ICJ. Article 36(1) of the ICJ Statute permits states to submit to the Court's jurisdiction on an ad hoc basis through a special agreement or treaty. This clause allows states to specify the scope and conditions under which they agree to submit their disputes to the ICJ.¹⁰

Advisory Jurisdiction

Advisory jurisdiction pertains to the ICJ's authority to provide non-binding opinions on legal questions referred to it by authorized international entities. Article 65 of the ICJ Statute governs this aspect of the Court's functions.¹¹ The advisory opinion handed down by the International Court of Justice on 15 December 1989, the applicability of Article VI, section 22 of the Convention on the Privileges and Immunities of the United Nations.¹² Advisory opinions are intended to offer authoritative interpretations of international law, and while they do not have the same binding force as judgments in contentious cases, they hold considerable legal and political weight. The authoritative interpretations of international law are intended to guide the requesting organizations or bodies. Advisory opinions, however, are not binding and do not hold the same legal weight as judgments rendered in contentious cases. The subjects of advisory opinions can encompass a wide range of legal issues, including questions related to the interpretation of international treaties, the legality of certain actions under

⁸ Gary L. Scott and Craig L. Carr. “The ICJ and Compulsory Jurisdiction: The Case for Closing the Clause” *The American Journal of International Law*, Vol 81 no 1 57 (Jan 1987) Available at <https://www.wjstore.org/stable/2202131> visited on 28 August 2023.

⁹ “Declarations recognizing the jurisdiction of the Court as compulsory” Available at <https://www.icj-cij.org/declarations> visited on 28 August 2023

¹⁰ International Court of Justice “Basis of the Court's jurisdiction” Available at <https://www.icj-cij.org/basis-of-jurisdiction#:~:text=By%20virtue%20of%20the%20article,the%20International%20Court%20of%20Justice.&text=The%20Statute%20provides%20that%20a,the%20Court%20in%20legal%20disputes> Visited on 28 August 2023.

¹¹ International Court of Justice Statute, Article 65 states: “The Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request” Available at https://legal.un.org/avl/pdf/ha/sicj/icj_statute_e.pdf visited on 10 September 2023

¹² Roberto Ago, “Binding” Advisory Opinions of the International Court of Justice” *The American Journal of International Law*, Vol. 85, No. 3, 439 (Jul., 1991)



international law, or matters pertaining to the UN Charter¹³ and the ICJ's own statute.¹⁴ The procedure of advisory opinion is provided in Article 96 of the UN Charter¹⁵ and is governed by Article 65¹⁶, Article 66¹⁷, Article 67,¹⁸ and Article 68 of the statute of the court.¹⁹ The ICJ's jurisdiction, whether in contentious cases or advisory proceedings, is predicated on the principle of consent. States have the autonomy to decide whether or not to submit to the Court's jurisdiction, underscoring the voluntary nature of international adjudication. In certain instances, the ICJ may also determine questions of jurisdiction as a preliminary issue before proceeding to the merits of a case. This ensures that the Court's competence is established within the parameters defined by international law. The ICJ's jurisdictional framework plays a pivotal role in its ability to fulfill its mandate as the principal judicial organ of the United Nations. It reflects the foundational principle of state sovereignty, which allows nations to engage with the Court on terms that are agreeable to them, reinforcing the voluntary nature of international legal proceedings.

DISPUTE RESOLUTION PROCEDURE UNDER ICJ

The International Court of Justice (ICJ) employs a meticulous set of procedures mentioned in Article 39 to Article 64 of the Statute of the International Court of Justice to facilitate the fair and just resolution of disputes between sovereign states. After the mutual consent of disputed states in the case on the jurisdiction of ICJ, the next proceedings in ICJ have been initiated and These proceedings are outlined in the ICJ Rules of Procedure.²⁰

Filing an Application

The commencement of a case before the ICJ is a deliberate process that involves several distinct stages. The litigants before the Court typically consist of states. These states, acting as legal entities, bring

¹³Charter of United Nations Available at <https://www.icj-cij.org/charter-of-the-united-nations> visited on 10 September 2023

¹⁴Statute of The International Court of Justice Available at <https://www.icj-cij.org/statute> visited on 10 September 2023.

¹⁵ Charter of United Nations Article 96 states: "1. The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question. 2. Other organs of the United Nations and specialized agencies, which may at any time be so authorized by the General Assembly, may also request advisory opinions of the Court on legal questions arising within the scope of their activities".

¹⁶Statute of the International Court of Justice, Article 65 states: "1. The Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request. 2. Questions upon which the advisory opinion of the Court is asked shall be laid before the Court by means of a written request containing an exact statement of the question upon which an opinion is required, and accompanied by all documents likely to throw light upon the question".

¹⁷ *Id*, Article 66 states: "1. The Registrar shall forthwith give notice of the request for an advisory opinion to all states entitled to appear before the Court. 2. The Registrar shall also, by means of a special and direct communication, notify any state entitled to appear before the Court or international organization considered by the Court, or, should it not be sitting, by the President, as likely to be able to furnish information on the question, that the Court will be prepared to receive, within a time limit to be fixed by the President, written statements, or to hear, at a public sitting to be held for the purpose, oral statements relating to the question".

¹⁸*Id*, Article 67 states "The Court shall deliver its advisory opinions in open court, notice having been given to the Secretary-General and to the representatives of Members of the United Nations, of other states and of international organizations immediately concerned".

¹⁹*Id*, Article 68 states "In the exercise of its advisory functions the Court shall further be guided by the provisions of the present Statute which apply in contentious cases to the extent to which it recognizes them to be applicable".

²⁰ International Court of justice "How the Court Works" Available at <https://www.icj-cij.org/how-the-court-works> visited on 28 August 2023.



their disputes to the ICJ seeking a binding resolution. Cases are brought before the Court either by the notification of the special agreement or by a written application addressed to the registrar,²¹ parties represented by agents and advocates, memorials and²² Memorial and Counter-Memorial in written form,²³ the party initiating the proceedings submits an application setting forth the basis of the claim or grievance. The respondent then prepares a counter-memorial, presenting its own legal arguments and defenses. Subsequently, the applicant may submit a reply to address any new matters raised in the counter-memorial.

The ICJ places a strong emphasis on the careful presentation of evidence and legal arguments.²⁴

Written Pleadings:

The law is prescribed under Article 43 of The Statute. The procedure consists of two phases i.e. a written and an oral phase²⁵. Written proceedings shall consist of the memorials, counter memorials, and replies.²⁶ Communications shall be made through the Registrar. ²⁷A certified copy of every document produced by one party shall be communicated to the other party.²⁸ Oral proceedings shall consist of a hearing by the Court of witnesses, experts, agents, counsel, and advocates.²⁹ A written procedure is controlled by articles 44 to 53 of the Rules of Court(1978).³⁰

Oral Procedure:

These hearings provide an invaluable forum for the parties to present their cases in person. Advocates, often legal representatives of the states, present arguments before the Court, responding to questions posed by the judges.³¹

Judgment and its Enforcement

The culmination of the ICJ's proceedings is the issuance of a judgment or advisory opinion. In contentious cases, the Court renders a judgment that is binding upon the parties. This judgment may include determinations on the merits, as well as any necessary orders or measures of reparation.³²

NOTABLE CASES

The International Court of Justice has handled numerous landmark cases that have shaped international law and its dispute resolution mechanism. Here are a few notable cases:

*Corfu Channel Case (United Kingdom v. Albania)*³³

In 1946, two British Warships collided with mines in the Corfu channel in the Albanian Sea which resulted in loss and destruction to both life and Property. In response British Royal Navy Swept for mines in the Corfu channel in Albanian waters without Albanian Consent. The court held that Albania was responsible for the explosion in Albanian waters and also responsible for the damage to property

²¹ Statute of the International Court of Justice, Article 40.

²² *Id.*, Article 42

²³ *Id.*, Article 43.

²⁴ *Id.*, Article 44.

²⁵ *Id.*, Article 43(1).

²⁶ *Id.*, Article 43(2).

²⁷ *Id.*, Article 43(3).

²⁸ *Id.*, Article 43(4).

²⁹ *Id.*, Article 43(5).

³⁰ Rules of Court (1978) Available at <https://www.icj-cij.org/rules>.

³¹ *Id.* Article 54-72.

³² Statute of the International Court of Justice, Article 55-64.

³³ I.C.J. Reports (1949), p.4.



and loss of human life. the court extended its decision and held that the operation by the Royal Navy to sweep the mines in the Albanian waters violated the Sovereignty of Albanian, the British navy act would not be justified on the basis that their intervention is free self-perfection and right of innocent passage. the court added the point that International law did not allow a State to assemble a large number of warships in the territorial waters of another State and to carry out mine sweeping in those waters. ICJ emphasized the prohibition of the use of force and respect for territorial sovereignty.

*Nicaragua v. United States*³⁴

Nicaragua v. United States is a contentious case, brought before the ICJ in 1984 by the Republic of Nicaragua, centered on allegations of unlawful intervention by the United States in the internal affairs of Nicaragua, contravening established principles of customary international law. Nicaragua contended that the U.S. provided military assistance to armed groups within Nicaragua and engaged in mining Nicaraguan harbors.

The ICJ's judgment in 1986 was a landmark decision. The Court ruled in favor of Nicaragua, finding the United States guilty of violating international law through its support of armed groups and the mining of Nicaraguan harbors. The decision reverberated internationally, reaffirming the principles of non-intervention, sovereignty, and the prohibition of the use of force in international relations.

*Legality of the Threat or Use of Nuclear Weapons*³⁵

In this case, the General Assembly requested an Advisory opinion on the legality of the threat or use of nuclear weapons in various circumstances and the ICJ opined that the threat or use of nuclear weapons would generally be contrary to the principles of international law but did not provide a definitive answer in extreme circumstances.

*Asylum Case (Columbia v. Peru)*³⁶

In this case, the ICJ clarified the law relating to asylum.

*Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations (Advisory Opinion of 15 December 1989)*³⁷

The United Nations Economic and Social Council submitted a request to the ICJ seeking an advisory opinion on the "Status of Special Rapporteurs" when an issue arose between the UN and the government of Romania on the status of a UN Special Rapporteur Mr. Dumitru Mazilu who was stationed in Romania in Sub-Commission on Prevention of Discrimination and Protection of Minorities to prepare a report on the role of youth in the field of human rights. The Court held that during all the time, Mr. Mazilu was the expert on the mission covered under Section 22 and therefore entitled to all immunities and privileges. Facts like that Mr. Mazilu fell seriously ill in May 1987 and his intellectual capacity was questioned by Romania, do not affect his status as an expert on the mission under Section 22.

*Nottenbohm Case (Liechtenstein v. Guatemala)*³⁸

In this case, the Court propounded the principle of effective nationality.

*Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*³⁹

The case was brought before the ICJ by Bosnia and Herzegovina against the Federal Republic of Yugoslavia in respect of a dispute concerning alleged violations of the Convention on the Prevention and Punishment of the Crime of Genocide, adopted by the General Assembly of the United Nations

³⁴Military and Paramilitary Activities in and against Nicaragua (The Republic of Nicaragua V. The United States of America), Merits, Judgment, I.C.J Report (1986),p.14.

³⁵I.C.J.Reports(1996).

³⁶I.C.J.Reports(1950),p.266.

³⁷I.C.J.Report(1989) Available at <https://www.icj-cij.org/case/81> visited on 18 August 2023.

³⁸I.C.J.Report(1955),p.4.

³⁹ I.C.J Report (2007),p. 43



on 9 December 1948. The Application invoked Article IX of the Genocide Convention as the basis for the jurisdiction of the Court.

The Court considered that the most appropriate form of satisfaction would be a declaration in the operative clause of the Judgment that the respondent had failed to comply with the obligation to prevent the crime of genocide. As for the obligation to punish acts of genocide, the Court found that a declaration in the operative clause that the respondent had violated its obligations under the Convention and that it must transfer individuals accused of genocide to the ICTY and must co-operate fully with the Tribunal would constitute appropriate satisfaction.

EFFECT OF ICJ DECISIONS

The International Court of Justice plays a crucial role in the international legal system, and its decision and advisory opinions have several effects.

Interpreting Treaties and Customary Law

The decisions and advisory opinions rendered by the International Court of Justice (ICJ) carry profound significance in the development and evolution of customary international law.

Through its jurisprudence, the ICJ has contributed to the crystallization of customary norms. Precedents set by the Court in its judgments and advisory opinions serve as authoritative interpretations of international legal principles. These interpretations guide the conduct of states and other international actors, influencing their behavior in matters ranging from state responsibility to human rights.

The ICJ's contributions to the development of customary international law are particularly evident in cases addressing issues of state sovereignty, territorial disputes, and the prohibition of the use of force. **Binding Nature:** In cases where states have voluntarily submitted to the jurisdiction of the ICJ and accepted its decision, the court's rulings are binding on the parties involved. States are obligated to comply with the judgment, and failure to do so may have diplomatic and legal consequences.

Promotion of Peaceful Dispute Resolution

By providing a forum for the peaceful settlement of disputes, the ICJ contributes to the promotion of international peace and security. States are encouraged to resolve their conflicts through legal means rather than resorting to force.

Encouragement of Rule of Law

The ICJ reinforces the importance of the rule of law in international relations. Its existence and functioning contribute to the idea that states should abide by established legal principles and norms in their interactions with each other.

Strengthening the Rule of Law

The ICJ plays a crucial role in upholding and strengthening the rule of law at the international level. Its decisions provide authoritative interpretations of international legal norms, ensuring that states and other international actors adhere to established principles and obligations.

Article 38 relates to judicial decisions in general. The decisions of the court have a normative effect on states, international organizations, international arbitral tribunals, and international lawyers all over the international community mostly increasingly attribute to decisions of the ICJ.

presently the decision of the ICJ has been accepted by the international community as the most authoritative statement on the point of law. The decisions given by the ICJ on the point of state responsibility are recommendable and invoked as law in diplomatic correspondence. Article 38(1)(d) of the ICJ statute relates to the role of the ICJ which reflects the traditional function of the ICJ. But in the present context, the decision of the ICJ transformed international law as a legal system due to which a



number of cases come to ICJ this shows that the international community widely accepts the decision of the court and has Faith in the judicial role of ICJ. The expansion of the Judicial role of ICJ has rapidly increased the international judicial system which means that most of the disputes of states have been resolved by ICJ. As more and more disputes between states are resolved by ICJ, states rely on the decisions of the court and validate their international legal claims. Article 59 of the Statute decisions of the ICJ bind only the parties to the case, the court treats all its decisions as judicial precedent except in special circumstances. In *Croatia v Serbia* it is declared that to the extent that the decisions contain findings of law the court will treat them as all previous decisions: that is to say that, while these decisions are in no way binding on the court, it will not depart from its settled jurisprudence unless it finds very particular reasons to do so. The practice of the International Court of Justice also indicates that while making a decision in the case the court not only considers its own decisions but also looks out the judgments of sister institutions. Though the decisions do not bind precedents the court can treat it as persuasive authority for sound reasoning or analysis. Article 38 of the Statute reflects that effective international judicial law-making is the need of the international community and today's International law is a more vibrant and mature legal system than ever before.⁴⁰

CONCLUSION

The International Court of Justice (ICJ) stands as a beacon of hope in the realm of international law, providing a forum for the peaceful resolution of disputes between sovereign states. Through its rich history and robust jurisdictional framework, the ICJ has played a pivotal role in shaping the landscape of global governance. The multifaceted role of the ICJ delves into its historical foundations, jurisdictional framework, procedural mechanisms, and landmark cases. The Court's decisions and advisory opinions contribute to the development of customary international law, while also considering its impact on the rule of law at the international level. Additionally, the role that the ICJ plays in the maintenance of international peace and security. Looking ahead, the ICJ holds the potential to continue evolving and adapting to the ever-changing landscape of international relations. The Court's effectiveness could be further enhanced by exploring avenues for strengthening enforcement mechanisms, as well as by continuing efforts to enhance transparency and impartiality in its proceedings. As states continue to grapple with complex global challenges, the ICJ's role as a trusted arbiter of international disputes remains indispensable. Its future prospects are intertwined with the collective commitment of the international community to uphold the principles of justice, legality, and the rule of law. The International Court of Justice embodies the enduring aspiration for a world where conflicts are resolved through legal means rather than force. It is a testament to the power of international law in fostering peace, stability, and justice on the global stage, offers insights into the future prospects of the International Court of Justice.

⁴⁰Thomas Bvergenthal "law making by the ICJ And other International courts" *American Society of International law Vol 103* , 403-405(2009).