
AN INSIGHT ON THE INTERNATIONAL COURT OF JUSTICE

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ABSTRACT

International legal personality is not a static concept, and any definition must be sufficiently flexible and able to deal with non-state actors which may appear on the international plane. All the states in an international sphere are equally sovereign and not all the states share common ideologies or have the same weight in international relations. It is also to be taken into consideration that the international legal system to a large extent is voluntary in nature and cannot be imposed upon the states. Due to which the primary aim of international law becomes to achieve international peace and security and this may be achieved not by making any state labelled as “guilty” but through promotion of conciliation. Therefore, International law is a way to mould the behaviour of states and encourage compliance with international norms. Hence, one of such bodies under the International statute is the International Court of Justice.

INTRODUCTION

“The importance of the rule of law is crucial against the backdrop of the deepening process of globalization. Law does not replace politics or economics, but without it we cannot construct anything that will last in the international community¹” – Justice, Hisashi Owada.

As we know that the primary role of any court of law is to provide justice to the parties approaching it for redressal, in an international arena every state is sovereign but yet connected to each other and forms a part of International Relationships as no state can survive in isolation and there are certain matters which needs international attention, summarizing this it can be referred that international community is dynamic in nature. Due to this dynamic nature the sovereign states often indulge in clashes with each other leading to conflicts or disputes. Now these disputes can be related to the cross- border, maritime borders, violation of treaties etc. Hence, to regulate and give chance to the countries to resolve such disputes we have the International Court of Justice as one of the principal organs of the United Nation which has its seating in the Peace Palace in The Hague, Netherlands².

In 1945, the International Court of Justice was founded with the mandate to resolve international conflicts and, if governments so choose, to provide advisory opinions on legal matters. The International Court of Justice (ICJ) is made up of 15 judges who are each independently elected to nine-year terms of office by the General Assembly and Security Council of the United Nations. No one nation may have more than one judge from that nation. The Court's membership must be representative of the world's major civilizations and legal systems³.

HISTORY OF ICJ

The history and development of the International Court of Justice was a long developing process which has evolved over the years and then finally the said court was created. The UN

¹ The President of the ICJ, addressing the General Assembly, welcomes the growing trust and respect of the international community for the court, ICJ Press Release, No.2009/31, 2 November 2009.

² Statute of International Court of Justice.

³ “International Court of Justice” The US Department of Justice.

Charter in its Article 33⁴ talks about various modes of pacific settlements which involve the ideas of Mediation, Negotiation, Arbitration, Conciliation, Judicial Settlement etc.

The evolution of ICJ can be dated back to the Hague Peace Conference of 1899⁵ wherein the countries cumulatively adopted the Convention on the Pacific Settlement of International Disputes which dealt with the methods of Pacific Settlement with respect to the dispute settlement. As a result of this convention a Permanent Court of Arbitration⁶ was established in 1900 and came into operation 1902⁷.

The next step to the evolution of ICJ was the institution of the Permanent Court of International Justice⁸. As in accordance with the League of Nations Covenant⁹, the Council of the League was tasked with developing plans for the establishment of a Permanent Court of International Justice (PCIJ), which would have the authority to both hear and decide any dispute of an international nature that was brought before it by the parties to the dispute and to provide advice on any matter that was brought before it by the League of Nations Council or Assembly. Owing to this the body of PCIJ was instituted in 1922¹⁰.

As an international legal body PCIJ dealt with 29 cases involving conflicts between States between 1922 and 1940 and published 27 advisory opinions. In addition, it was given jurisdiction over a number of different categories of disputes by hundreds of treaties, conventions, and declarations¹¹.

Although, with an outbreak of second world war in September 1939 the consequences were faced by PCIJ as post its last decision in 1940, the body was experiencing a constant decline in its functions and no elections judges were also held. This was the declining phase for the international body. Although, in 1944 the Inter-American Jurisprudence Committee proposed that the PCIJ's jurisdiction be increased, and the Secretaries of State of the United States and the United Kingdom both supported the creation or re-creation of an international court after

⁴ UN Charter, s. Article 33.

⁵ Economic and Social Council, The Role and Importance of the Hauge Conferences, UN ESCOR (Mar. 16, 2017).

⁶ "The Permanent Court of International Justice, the International Court of Justice, the League of Nations, and the United Nations: A Comparative Empirical Survey" 66 JSTOR 540-542 (1972).

⁷ *Infra* note. 11.

⁸ *Supra* note. 6.

⁹ The League of Nations Covenant, s. Article 14.

¹⁰ *Supra* note. 6.

¹¹ "International Court of Justice" ICJ-Cij.

the war. In order to organize an informal Inter-Allied Committee to look into the situation, the British government took the initiative in early 1943 and invited a number of experts to London. Sir William Malkin (United Kingdom) presided over this committee, which had 19 meetings in which attorneys from 11 other nations participated¹².

Although favouring the creation of a new court, the delegates at the San Francisco Conference wished to maintain continuity with the PCIJ and the Statute of the ICJ was essentially the same as that of its predecessor. In addition, the ICJ adopted, without any substantial amendment, the Rules of Court of the PCIJ¹³.

Henceforth, the judges of PCIJ resigned on 31st January 1946 and the body was formally dissolved in April 1946. In addition PCIJ was re-established as the International Court of Justice on 26 June 1945 in accordance with the UN Charter¹⁴ and came into function from April 1946. Judge José Gustavo Guerrero (El Salvador) was elected as the first president of ICJ, who was also the last president of PCIJ.

COMPOSITION AND ROLE OF ICJ

The International Court of Justice is a body composed of 15 judges who are elected for a term of nine years in accordance with the terms of office set by the General Assembly and the Security Council of the United Nations. It is a necessity that a candidate must obtain absolute majority in both the bodies in order to be elected. The judges elected are eligible for re-election and in order to maintain a continuity one-third of the court is elected every three years¹⁵.

The elections take place in New York (USA) during the annual fall session of the General Assembly. The term of office of the judges elected in the three-year elections begins on February 6 of the following year, after which the court elects the president and vice-president for a three-year term in a secret ballot.

Moving forward ICJ has a twofold role¹⁶ which are as follows -

1. ICJ plays an effective role in settling the legal disputes submitted by the states in

¹² *Supra* note. 11.

¹³ International Law 339-340 (Sweet & Maxwell, 18th edn., 2016).

¹⁴ The UN Charter, s. Article 92.

¹⁵ International Law 341-342 (Sweet & Maxwell, 18th edn., 2016).

¹⁶ Statute of International Court of Justice.

accordance with international norms. (Contentious Cases)

2. ICJ also gives advisory opinions on legal matters which are referred to the court by the duly authorized international organizations and agencies. (Advisory Cases)

As it is established that ICJ can perform the above mentioned roles only if the states party to the conflict or the dispute mutually consent to let ICJ become a third party and take a decision. Adding to this it is also seen that the international norms are not binding in nature as every state is sovereign in nature and is not liable to strictly adhere to the international laws as they are not binding but persuasive in nature. Despite the non-binding nature of the court, through its activities it still acts as an important agent in promoting the concept of rule of law at international level and maintaining good inter-state relations. Therefore, ICJ plays a crucial as well as a noble role in determination of existing laws and uphold justice between the states promoting international peace and harmony¹⁷.

CHAPTER XIV OF THE UN CHARTER

Chapter XIV of the UN Charter¹⁸ talks about the institution of the International Court of Justice. The Charter in its sections lays down about the necessity of establishment of the court and the role that the court is supposed to play.

One of the important article of this chapter that lays emphasis over the institution of ICJ as an organ of UN is Art.92¹⁹ of the UN Charter as this article clearly lays down that ICJ shall be a principal judicial organ of the United Nations and it would be functioning in furtherance of the annexed statute which is based on the Statute of the Permanent Court of International Justice and is also an integral and important part of the present charter.

In furtherance to this article this chapter also emphasizes that how every state who is a member of UN becomes a member to the ICJ and if any state who is not a member to the UN can still abide by the statute of ICJ by the virtue of the conditions levied by the General Assembly on the recommendations of the Security Council²⁰.

¹⁷ “The Role of the International Court of Justice as the Principal Judicial Organ of the United Nations” Law Department London School of Economics and Political Science 22.

¹⁸ The UN Charter, s. Chapter XIV.

¹⁹ The UN Charter, s. Article 92.

²⁰ The UN Charter, s. Article 93.

It is under the Art.96²¹ of this charter wherein the ICJ is given the power to decide upon the contentious case as well as give advisory opinions of the court on the legal questions.

Therefore, it can be concluded that in accordance with the UN Charter it is well established that the ICJ is a predecessor of the PCIJ and that it is a principal judicial organ of the UN which is established with an objective to settle the disputes and ensure an environment of peaceful international relations.

HOW DOES ICJ FUNCTIONS?

The ICJ functions differently in every type of case it handles, the different ways in which these courts functions are as follows-

(i) Contentious Cases

These are the disputes that arise between the states and only the states who have become a party to the statute of ICJ can become parties in contentious cases. One of the other essential conditions for states to become a party to contentious cases is that the disputing states have mutually consented and approached the ICJ and accepted its jurisdiction²².

A Member State of the United Nations executes, by signing the Charter, to abide by the Court's ruling in any case to which it is a party. It is additionally uncommon for a ruling not to be carried out because a case can only be brought before the Court and determined by it if the parties have, in some manner, accepted the Court's jurisdiction over the case. States can show such acceptance to jurisdiction either by entering special agreement or existence of any jurisdictional clause or by the reciprocal effect of any declarations made by the state under the Statute. A State that believes the opposing party has disregarded its duties under a judgment delivered by the Court may bring the case before the Security Council, which has the authority to suggest or decide on the steps that should be taken to give the judgment effect.

Henceforth, a case may be brought to a conclusion at any stage of the proceedings by a settlement between the parties or by discontinuance. In case of the latter, an applicant State may at any time inform the Court that it does not wish to continue the proceedings, or the two

²¹ The UN Charter, s. Article 96.

²² The ICJ Statute, s. Article 34.

parties may declare that they have agreed to withdraw the case. The Court then removes the case from its List²³.

(ii) Advisory Proceedings -

The General Assembly and Security Council²⁴ of the United Nations may seek advisory opinions from the ICJ about any legal questions. The other bodies of the United Nations may also seek advisory opinions from the ICJ but only with respect to the legal questions arising out of the scope of their functions²⁵.

Upon receiving the request for these advisory questions from the ICJ, the court assembles all the facts and is empowered to carry out all the proceedings in written and oral way, similar to the proceedings in the contentious cases²⁶.

The advisory opinion is presented at a public meeting to conclude the proceedings.

Unlike the Court's verdicts, these views are mainly advisory in nature and are not binding. The organ, agency, or organization making the request is still free to implement the view however it sees fit or not at all. However, some laws or agreements stipulate that a court's advisory opinion does have legal weight²⁷.

Therefore, the advisory views of the Court are linked to its authority and prestige, and a decision by the relevant institution or agency to back up an opinion that is sanctioned by international law.

DECIDED CASE LAWS BY THE ICJ -

I. Nicaragua v. Colombia, 2023²⁸

This case was filed to resolve the question of the *“Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast.”* It

²³ International Law 355-357 (Sweet & Maxwell, 18th edn., 2016).

²⁴ UN Charter, s. Article 96.

²⁵ The ICJ Statute, s. Article 65.

²⁶ “The Role of the International Court of Justice as the Principal Judicial Organ of the United Nations” Law Department London School of Economics and Political Science 45-47.

²⁷ The ICJ Statute, s. Article 66.

²⁸ Territorial and Maritime Dispute, (Nicaragua v. Colombia) (Int’l Ct. Justice, July 13, 2023) Decision of the court cited herein is available at its website - <https://www.icj-cij.org/case/154>.

was a contentious case.

According to Colombia, there have been "a number of explicit recognitions" regarding the traditional fishing rights of the Raizales to engage in artisanal fishing in waters that are currently a part of Nicaragua's Exclusive Economic Zone. In light of the Court, President Ortega's speeches underline that residents of the Raizales community or those who live in the Archipelago must have a fishing permit or license from Nicaragua in order to continue engaging in artisanal or industrial fishing.

In order to address the issue of fishing permits for the Raizal community, President Ortega suggested "creating a commission to work to delimit where the Raizal people can fish in the virtue of their historic rights," "elaborating an agreement between Colombia and Nicaragua to regulate the situation," and "establishing a Nicaraguan consular section" on the San Andrés island.

According to a Court judgment, Nicaragua has not accepted or recognized the Raizales' right to fish within its exclusive economic zone (EEZ) through words made by its head of state, contrary to Colombia's contention.

In conclusion, the Court found that neither Nicaragua nor Colombia had recognized or accepted the Raizales' traditional fishing rights or had made a binding commitment to uphold them through unilateral statements made by their Head of State, nor had Colombia established the existence of such rights for residents of the San Andrés Archipelago.

The court recommended that the two states negotiate an agreement on the Raizales community's access to fishing opportunities in Nicaragua's exclusive economic zone. According to the court, other countries have the right to use freedom of navigation in the exclusive economic zone as usual under international law and Article 58 of the United Nations Convention on the Law of the Sea. Therefore, the inhabitants of the Archipelago, including the Raizales, have free access to the exclusive economic zone of Nicaragua, even when they travel between inhabited islands and fishing grounds on the Colombian side²⁹.

²⁹ "International Decisions" *The American Journal of International Law*(2013).

II. Legal Consequences of the Separation of the Chagos Archipelago from Mauritius, 1965³⁰

In the year 2017 the General Assembly of the United Nations adopted a resolution in reference to the Statute of the ICJ³¹ to issue an advisory opinion on certain legal questions, with respect to the completion of lawful independence of Mauritius in 1968 and secondly with respect to the consequences in the international law.

In this case the court held collectively that it has locale to offer the warning viewpoint as mentioned and by 13 votes to one concluded that the unit of the Chagos Archipelago preceding the last phase of decolonization was unjust hence disregarding global regulation and explicitly the right to self-assurance.

Although the opinion of the ICJ in the matters of advisory opinion are not of binding nature, still such opinion is provided by an authoritative and prestigious judicial body and therefore has a high value. In legal language, this assessment could act as a reason for the gatherings required to lay out the locale of a worldwide court, for example, the ICJ or an arbitral body to settle all issues with respect to the political status of the Chagos Archipelago. In the end, the Court's opinion suggests that the UK could have avoided similar claims from Mauritius or developed a stronger legal defence in a similar situation if the agreement for the Chagos Archipelago's detachment had been signed after the decolonization process had been completed with legitimate representatives of the Mauritius people present³².

CONCLUSION

As the vital legal organ of the United Nations, it is a significant feature of ICJ to advance and keep up with harmonious relationship between the states. It settles instances of outrageous global intricacy and help nations resolve their disputes without hampering the international peace and relations. The International Court of Justice (ICJ) supports the United Nations by issuing decisions, opinions, and orders to help the organization accomplish its primary goal of

³⁰ Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965 (Int'l Ct. Justice, February 25, 2019) Decision of the court cited herein is available at its website - <https://www.icj-cij.org/case/169>.

³¹ The ICJ Statute, s. Article 65.

³² "Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965 (ICJ Advisory Opinion)" 35 Utrecht Journal of International and European Law 50-55 (2020).

preserving and advancing international peace and security.

In any case, notwithstanding having such a lot of power, it often fails to accomplish its ultimate purpose as the international laws cannot be made completely binding in nature as the states who are the member are independent and sovereign nations which concludes that no decision can be mandated or forced upon. As a result often it is seen that Nations don't agree with decisions from the court.

Hence notwithstanding ICJ is a very powerful and important organ of the United Nations in the realm of International Law, it appears to develop progressively which ensures to be less compelling upon the States but still being in consonance with the standards of international law and norms.