



An Introduction to the International Court of Justice

The International Court of Justice (ICJ), which has its seat at The Hague, is the principle judicial organ of the United Nations. The creation of the Court represented the culmination of a long development of methods for the pacific settlement of international disputes, the origins of which can be traced back to classical times. Article 33 of the United Nations Charter lists the following methods for the pacific settlement of disputes between States: negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, and resort to regional agencies or arrangements; good offices should also be added to this list. This Charter is the basis for the proceedings of the court and its officers.

The outbreak of war in September 1939 had serious consequences for the Permanent Court of International Justice, which had for some years prior known a period of diminished activity. In 1942, it was declared that an international court be reestablished, which we know today as the ICJ.

As one of the six main organs of the United Nations and its principle judicial organ, the ICJ has guaranteed impartial adjudication free of political pressure or economic bargaining. The organization of this court is determined by the Statute of the International Court of Justice, an integral part of the United Nations Charter, and is open for signature to member states only. The proceedings of the ICJ are officially carried out in French and English, and is located at the Peace Palace in The Hague, Netherlands.

The main function of the Court is to achieve consensus and peaceful resolution of disputes submitted by sovereign member states in accordance with international law. Non-member states may also appear before the Court; however, they must meet terms outlines by the General Assembly under the recommendation of the

Security Council. These non-member states must also swear to accept the “Statute of the International Court of Justice,” as well as agree to abide by any ruling made by the ICJ. They must also make annual contributions to the Court. The Court also hears questions of law submitted by any organ of the United Nations which have been authorized by the United Nations General Assembly, providing advisory opinions.

The registry of the ICJ functions as the secretariat and as the administrative organ to the Court. It is in liaison with its own bodies. While the Court is not the sole international court, it is the only court that secures the pacific settlements of international disputes for all member states of the United Nations. Other international courts include the European Court of Human Rights (ECHR) and specialized international courts and Tribunals such as the International Criminal Court and the International Criminal Tribunals for Rwanda and the former Yugoslavia (ICTR and ICTY).

The International Court of Justice consists of 15 judges each with 9 year terms in office that are renewable. At any given time, five of these judges hail from the Western part of the world, three from Africa, three from Asia, two from Latin America, and two from Eastern Europe. The judges go through a rigorous election process at the United Nations Headquarters via secret ballot by the General Assembly and the Security Council. In order to become elected, each judge must receive an absolute majority in both bodies, have a high moral character, be experts in international law, and qualify for the highest judiciary in their respective countries. The judges are independent and do not reflect or represent their governments in any way. No two judges may be elected from the same country. When disputing parties have no representation among the judges, ad hoc judges are added and retain full voting rights in the case.

Once a nation has consented to the jurisdiction of the Court, it must accept the Court’s verdict, a single opinion, as final. This decision cannot be appealed, but a Member State may wish to apply for a revision of a judgement under Article 61 of the ICJ Statute. Case resolution encompasses settlement by the parties during the proceedings, state withdrawal from proceedings, and a court verdict. The judgement of the court must be fulfilled by both parties and the Security Council has the right to enforce the Court’ judgements and sanction nations for non-compliance as seen fit. The Court is one of a kind in the sense that it does not

have compulsory international jurisdiction and is not governed by an international constitution. The Court bases its decisions on treaties, principles of international law, international custom, judicial decisions, and the writings and findings of the most highly qualified experts on international law.

Procedure before the Court is governed by its Statute and the Rules of the Court. Both of these parts join aspects of the Anglo-Saxon Common Law and European Civil Law. The Court makes decisions for the majority of its cases using Article 38 of the ICJ Statute. Article 38 specifies that 1) the Court, whose function is to decide in accordance with international law such disputes as are submitted to it shall apply: a) international conventions, whether general or particular, establishing rules expressly recognized by the contesting states; b) international custom, as evidence of a general practice accepted as law; c) the general principles of law recognized by civilized nations; d) subject to the provisions of Article 59, judicial decisions and the teaching of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

Article 59 of the ICJ Statute explicitly states that the common law notion of precedent, also known as *stare decisis*, does not apply to the decisions made by the Court. It specifically states that the decision of the Court has no binding force except between the parties and in respect of that particular case. The Court rarely deviates from its previous decisions and treats those decisions as precedent. The Court can also, should the disputing parties agree to follow it, decide *ex aequo et bono*, or in justice and fairness. This enables the Court to make a reasonable decision based on what is equal and fair under special circumstances. However, it is worth noting that this provision has yet to be used in the Court.

The International Court of Justice has full authority over cases that disputing parties refer to, governed by Article 36 of the ICJ Statute. The Court retains authority over treaties and conventions that provide recourse in the Court. The Court also has inferred consent to its jurisdiction.

There are several steps involved until resolution between two states is achieved. Firstly, proceedings must begin by request of one or both parties involved. This may be by special agreement, when both parties agree to file a complaint, or by submitting an application, which is a unilateral process. Written and oral phases

compose a proceeding, and include parties filing and exchanging pleadings, with a limit of two pleadings that can be submitted. Each party reads their final submission and members of the Court retire for individual research, exchange of notes, and extensive secret deliberations.

In the Great Hall of Justice, a public reading of the Judgement of Opinion is held and may include separate or dissenting opinions.

The future of the ICJ is crucial in maintaining world peace, and depends on the cooperation of Member States. A development of the principles to international law can provide nations with a baseline for addressing legal disputes and forming resolve. There is however always a risk that the judgements made by the court result in devastating events or are not enforced.