



Empowerment of International Court of Justice

**Shreemanshu
Kumar Dash**

Research Scholar, Department of Law, Sambalpur University, Sambalpur, Odisha, INDIA

ABSTRACT

Man is born free but everywhere he is in chain. This chain is long enough, in the present day scenario, to cover the populace of entire world, particularly after the whole world has been unified. United we stand, divided we fall. Law helps to keep people in chain by harmonizing their conflicting interest. Law and its enforceability go side by side. Municipal laws are more forceful than the international laws are. The later loses efficacy for it lacks enforceability. At this crucial juncture the International Court of Justice plays the centre stage role supposed to harmonize the conflicting interest of all the states of the United Nations. But it is thought provoking that practice is not as satisfactory as the theory is. Issues like terrorism, drugs abuse and climatic change etc. pose real threat to the very existence of the world at present. We are left with the options, in the name of development, to choose either to run longer shoulder to shoulder with others or to run faster in isolation, at the cost of the interest of the world at large. Can it be thought that 'Empowerment of the International Court of Justice' may tend to meet this greatest end ?

KEYWORDS

International, Court, Asylum, Climate, Arms, Ammunitions, Assembly, Charter, Contentious, Advisory, Opinion, forum prorogatum

INTRODUCTION:

The International court of justice was established in 1945 by the charter of the United Nations as the principal judicial organ (Art.7, UN Charter). The Court's role is to settle, in accordance with international law legal disputes submitted to it by States and to give advisory opinions on legal questions referred to it by authorized United Nations organs and specialized agencies.

The seat of the Court is at the Peace Palace in Hague (Netherlands). Of the six principal organs of the United Nations, it is the only one not located in New York, United States of America.

The Court is composed of 15 judges, who are elected for terms of office of nine years by the United Nations General Assembly and the Security Council. It is assisted by a Registry, its administrative organs. Its official languages are English and French.

The Permanent Court of International Justice (PCIJ) was established under Art. XIV of the covenant of the League of Nations, which called on the League of Nations Council to formulate plans for an International Court design to contribute to the peaceful settlement of international disputes.

JURISDICTION:

THE International Court of Justice has jurisdiction in two types of cases: Contentious issues between States in which the Court produces binding rulings between States that agree, or have previously agreed, to submit to the ruling of the Court; and Advisory Opinions, which provide reasoned, but non-binding, ruling on properly submitted questions of international law, usually at the request of the United Nations General Assembly. Advisory opinions do not have to concern particular controversies between States, though they often do.

ACCESS TO THE COURT:

1. States: According to Art.34, "only States may be parties in cases before the Court irrespective of whether the State is independent or not." It follows therefore that all members of the United Nations are ipso facto parties to the statute of the Court. Non-members of the United Nations may also become parties to the statute as permitted by the General Assembly on the recommendation

of the Security Council. States which are not parties to the statute may have access to the Court only after filing with the Registrar of the Court a declaration by which they accept the Court's jurisdiction in accordance with the charter of the United Nations and subject to the condition that they would comply in good faith with the decision of the Court and to accept all the obligations of a member of the United Nations under Article 94 of the charter.

- 2. International Organizations:** According to Art.34 (1) of the statute, international organizations have no access to the court. However, they may have advisory opinion of the Court on any legal questions. Specialized agencies of the United Nations may also seek advisory opinion of the Court if authorized by the General Assembly in accordance with Art. 96 (2) of the charter.
- 3. Individuals:** Individuals do not have locus standi before the Court. However, the Court may hear a case only where the cause of the individual is sponsored by the state against another state as in such cases virtually it becomes a dispute between states.

Jurisdiction of the Court:

Jurisdiction of the court may be broadly divided into two types i.e.

1. Contentious Jurisdiction
2. Advisory Jurisdiction

Contentious Jurisdiction:

Consent plays a significant role in matters of international law. It is therefore not possible to summon any state against its will to submit to the jurisdiction of the Court. Consent may be express or implied or even *forum prorogatum* which means acts showing consent subsequent to the initiation of proceedings. Here consent means consent of both the disputant parties. Voluntary Jurisdiction is one where states parties to the Court give their consent in advance by signing various treaties and conventions. Ad hoc Jurisdiction is one where states parties to the Court give their consent by the conclusion of a special agreement. And Compulsory Jurisdiction is one where the states parties to the Court give their consent by accepting the compulsory jurisdiction clause. Voluntary Jurisdiction, Ad hoc Jurisdiction and Compulsory Jurisdiction are the species of Contentious Jurisdiction.

Advisory Jurisdiction:

Art. 65 provides that the Court may give an advisory opinion on any legal question to any body authorized in accordance with the charter of the United Nations or the statute. The above bodies may seek the advisory opinion only on legal questions. The General Assembly of the United Nations may seek advisory opinion on any 'legal question' whereas the Security Council can do so only on such 'legal questions' which arise within the scope of their activities.

Discretionary Power to give Advisory Opinion:

The power to give the advisory opinion is discretionary which means that the court is not obliged to give an opinion and can refuse to do so. However in the case of Reservation to the Genocide Convention the Court stated that "A reply to a request for an opinion should not, in principle, be refused." Cases where the Court may refuse to give an opinion are as follows:-

1. Where the opinion given by the Court is likely to amount to a decision of the Court in a Contentious case.
2. Where the Court considers that even on legal questions the opinion is likely to raise serious political issues, one of such reasons is that the opinion given by the Court may have far reaching political implications.
3. Where the Court does not have adequate information on the issue on which the opinion has been sought.
4. If the Court considers that it lacks jurisdiction to give advisory opinion on a particular question.

It is to be noted that the Court in principle does not decline to give an advisory opinion. It refuses only on "Compelling Reasons". In the history of the International Court of Justice there has been no refusal to act upon a request for advisory opinion except to the WHO in the case concerning the legality of the use by a state of Nuclear Weapons in Armed Conflict.

Nature of the Advisory Opinion:

The opinion given by the Court is referred to as 'legal advice' and it does not have any binding force. However, it is regarded as an authoritative statement of International Law. It is cited by the Court itself in the subsequent cases and as such adds to the growth of the International Law itself.

Law Applied by the Court:

According to Art.38, the Court shall apply International Law that includes-

1. International Conventions, general or particular, as recognized by the contesting states;
2. International Custom of a general practice accepted as law;
3. The general principles of law recognized by civilized nations;
4. Judicial decisions and the teachings of the highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

It is also provided that the court has a power to decide a case *ex aqua et bono* which implies that the Court may decide a dispute equitably and not strictly according to law, if the parties agree thereto.

Judgment of the Court:

According to Art.59 of the statute the decision of the Court is binding between the parties and in respect of that particular case. If the judgment is not unanimous, the Court decides the case on the majority of the judges present. In the event of an equality of votes, the President exercises the casting vote. The judgment of the Court is final and there is no provision for appeal though there is provision of revision and interpretation on certain grounds. The judgment has to be a reasoned one. The judgment is signed by the President and the Registrar. It is read in the open Court after giving due notice to the agents.

Enforcement of the Judgment:

All the members of the United Nations are supposed to comply with the decisions of the Court. A state party to the statute but not a member of the United Nations is also required to do so. If any party to a case fails to perform its obligations under a judgment of the Court; the other party may bring the matter before the Security Council that has discretion to choose between two different actions: either to make necessary recommendations, or to decide upon measures to be taken to give effect to the judgment of the Court. If the Security Council makes recommendations, it may require a party to comply with the judgment of the Court. Otherwise the Security Council may recommend a solution of the dispute altogether different from the decision of the Court. Where the party which doesn't comply with the decision of the Court, if happens to be a member of the Council, is not excluded from voting in the decision by which the Council makes the recommendation. The aggrieved state, on the other hand, whose right under the judgment has been violated, is excluded from voting, if it is not a member of the council. Moreover, if the state which does not comply with the decision of the Court is a permanent member of the Security Council or its Client State, it can prevent, by its veto, any recommendations made by the Council not favorable to it. Therefore the judgment of the Court virtually cannot be enforced against the permanent members of the Council or their Client States.

Evaluation of the Court:

The very objective, with which the establishment of the United Nations was conceptualized, was to adjust or settle international disputes or situations that might result in a breach of the world peace. But it is thought provoking a matter that the said objective has been a will o' the wisp so far its pragmatic aspect is concerned. The states are reluctant to submit the disputes to the Court. Though the General Assembly in 1974 had suggested that States should duly come forward to take recourse of the International Court of Justice and become participatory in matter of securing the world peace, that suggestion has not broadened the mindset of the state to do so. More important than that is the judges of the Court have not always been impartial and the Court is yet to earn that credibility so that the states rely on it. Yet another factor is that the procedure of the Court is complicated, time consuming and expensive. States are not ready to submit a dispute to the Court whose judgments are enforced by the Security Council that is supposed to be a political organ of the United Nations.

Role of the Court in the growth of International Law:

Despite being the backstage, history shows that the International Court of Justice has been the bedrock of International Law. Having ascertained certain uncertain international laws, it has delivered judgments concerning land frontiers and maritime boundaries, territorial sovereignty, non-interference in the internal affairs of states, non-use of force, diplomatic relations, hostage-taking, the right of asylum, nationality, guardianship, the right of passage and economic rights. Besides the above, it has given the advisory opinions, concerning inter alia admission of new states to the United Nations membership, reparation for injuries suffered in the service of the United Nations, the status of human rights rapporteurs and the legality of the threat or use of nuclear weapons.

But certain cases which were brought before the Court are indicative of the fact that the Court was not fully utilized by the states for settling international disputes and thus the very purpose of the concept of the United Nations, suffered a setback. The Court did not have enough work. But of late, the trend has changed, particularly after the cold war. Statistics show that the number of cases pending before the Court has been increasing year by year inter alia owing to the change of attitude of states, Constitution of Special Chambers and Creation of a Trust Fund.

Conclusion:

Very recently the judgment by an international tribunal in The Hague came down overwhelmingly in favour of claims by

the Philippines and is likely to increase global diplomatic pressure on Beijing to scale back military expansion in the area. By depriving certain outcrops of territorial-generating status, the ruling from the permanent court of arbitration effectively punches holes in China's all-encompassing "nine-dash" line that stretches deep into the South China Sea. But China has said it will not accept a ruling against it in a key international legal case over strategic reefs and atolls that Beijing claims would give it control over disputed waters of the South China Sea. It is noteworthy that the International Law explains the functions of each International Court and Tribunal present in The Hague, and it looks at how these institutions address contemporary problems. But it is of a great concern that the International Court of Justice is not as solid in essence as it is in form. It is high time that the International Court of Justice be empowered more than ever before so that it will be in a position to resolve any sort of disputes that concerns international issues. It is believed that debate and discussion play a pivotal role in resolving disputes. The challenge before the civilized society at present is how to combat terrorism, climatic change, drugs abuse etc. which are worse than the dispute between different states. It has now become imperative that all the member states of the United Nations join hands together to fight against the real threats to the humanity in general as stated above. Egoistic attitude of any of the states is no expected to be at the cost of the interest of the entire world. All the member states must take this moral duty in a sense of their legal duty in the interest of the entire world before it is too late. But thing is that we are already late in these matters. In the name of progress, exercising brain without aligned with conscience and having forgotten the very essence of humanity, we are already boarded on a hypersonic jet of development to play havoc with the whole world.

Suggestions:

1. There has to be a rethink on exercise of veto power for self-help by the developed countries.
2. The International Court of Justice should be given the power to take *suo motu* cognizance of certain matters that are likely to breach world peace.
3. Since the inter country relations are now liberalized, stricter regulatory measures are required to maintain check and balance.
4. The excessive increase of arms and ammunitions should not be permitted. If possible, the ones which are found to be excessively hazardous to a massive scale of humanity ought to be decided to be destroyed.
5. Provisions should be made so as to make all the states duty bound to abide by the international norms.
6. The number of judges of the International Court of Justice should be increased.
7. More stringent international norms are to be devised so as to afford equal treatment to all the states proportionately.
8. Certain judges of proved high moral character from various states should be elevated to the International Court of Justice where they should be given opportunity to be trained in matter of the international law.

Reference:

1. International Law and Human Rights : Dr. H.O.Agarwal.
2. Human Rights under International Law & Indian Law: Dr. Kapoor.
3. Indian Constitutional Law : Dr DD Basu.
4. Indian Constitutional Law: Prof. M.P.Jain.
5. United Kingdom v. Albania.
6. ICJ Reports.
7. PCIJ Series.
8. www.google.com