

CONCEPT OF INTERNATIONAL COURT IN INTERNATIONAL CRIMINAL LAW

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INTRODUCTION

At the tip of the nineteenth century, innovations in technology and style allowable construction of the primary skyscrapers in Chicago and led to profound changes within the urban atmosphere. The new potentialities in design led to an in-progress discussion between functionalists who felt that kind should follow function and opponents who believed that style ought to be affected solely by the laws of physics and also the limits of imagination, no matter the most purpose or operate of the development.'

About the time Chicago design was breaking freed from past height limitations, the international community began making its initial tribunals with the institution of the Permanent Court of Arbitration, that emerged from The Hague Peace Conferences of 1899 and 1907, the ephemeral Central American Court of Justice (1907-1918), and later the Permanent Court of International Justice ("PCIJ"), forerunner to this International Court of Justice ("ICJ"). Problems with kind and performance were additionally a part of discussions regarding the powers of those new establishments and have remained implicitly or expressly part of debates regarding the international judiciary for quite a century, whereas previous students have critiqued or supported rendering and also the independence of international courts, and mentioned queries of inexplicit or inherent judicial powers, there has been very little systematic effort to contemplate these topics in respect to the assorted specific functions served by totally different international courts. ICL may be a branch of public law that considerations the criminal responsibility of people for international crimes. it's premised on the concept that international legal prescriptions might impose obligations on people.

ICL is taken into account to be a comparatively new branch of public law and has developed from completely different sources. As an example, war crimes originate in IHL, whereas

genocide and crimes against humanity realize their origins in international human rights law. Since several IHL violations are criminalized as a law-breaking, IHL is a degree of reference in understanding the corresponding crime.

Like different branches of public law, the sources of ICL is also found in treaties, customary law and general principles of law. However, contrary to different fields of public law, the rights that guarantee a good trial, and above all the principle of lawfulness, need to determine that the crime was sufficiently outlined and clear on provides an honest notice to the wrongdoer that the conduct is criminal.

ICL are often implemented by national courts, hybrid courts or by international courts, however it absolutely was primarily implemented by the previous. However, already within the Convention on the hindrance and penalization of the Crime of race murder, from 1948, the likelihood that a wrongdoer may well be tried by “a competent assembly of the State within the territory of that the acts was committed, or by such international penal tribunal” was envisaged.

ABOUT THE COURT

“The International Court of Justice, “the principal judicial organ of the United Nations¹,” has replaced the League of Nations' Permanent Court of International Justice² with little change in the Court's constitution, in its relationship to the parent international organization, in the extent of its jurisdiction, or in the procedure prescribed under its Statute. The new Court has a new name, a technically new Statute, some new judges and, perhaps most important of all, some new members. In matters of substance, however, the new Court is a continuation of the old. It need not be expected, nor -as it intended, to add anything new to the structure of international order.”² The International Court of Justice (ICJ) was established under Chapter XIV of the United Nations Charter. It replaced the Permanent Court of Justice, which existed under the UN’s predecessor, the League of Nations.

¹ CHARTER, Art. 92; Revised statute, Art. 1

² Grant Gilmore, Assistant professor of law, Yale School of law, on *The international court of Justice*.

The primary purpose of the ICJ is to render opinions on international legal disputes between States. These cases may only be submitted by States that have accepted the jurisdiction of the ICJ. Another purpose of the ICJ is to clarify significant international legal questions brought to it by the UN General Assembly and the Security Council. When a UN body brings an issue before the Court, they are requesting an Advisory Opinion. The ICJ does not have authority to decide disputes involving individuals, the public, or private organizations, although the Court may request that public organizations present information in a case.

When states have a case before the Court, participants submit written memorials and present oral arguments. When the Court is asked to render an Advisory Opinion, interested or assigned parties also submit written memorials and present orally before the Court. In both types of cases, interested parties can seek to submit an Amicus Curiae memorial, Latin for “friend of the court.” Amicus Curiae memorials may be submitted by any AMUN delegation that seeks to assist the Court in denning the issue. These memorials may be submitted by states not specifically named in the case.

Article 38 of the Statute of the ICJ establishes the sources of law to be applied by the Court in resolving disputes in accordance with international law:

1. International Conventions (and treaties);
2. International Custom, as evidence of a general practice accepted as law; and
3. General Principles of Law recognized by civilized States.

Since 1945, the Court has rendered a number of decisions and advisory opinions. Since the Court has no binding enforcement mechanism, not all of the disputing parties have complied with its decisions. Despite this condition, the Court’s rulings are typically considered as authoritative interpretations of law and have a strong moral and assuasive effect on the international legal community.

The Court’s most effective areas have been boundary disputes and providing legal basis for enforcing damage claims by states in disputes involving the use of force³.

³ Chapter four, international court of justice

JURISDICTION OF THE COURT

Natural person’ jurisdiction – the Court only has jurisdiction over natural persons over the age of 18 at the time of the alleged commission of the crime. (Arts. 1, 25- 26).

Temporal jurisdiction – the Court has jurisdiction over conduct that occurred after the Rome Statute entered into force, i.e., 1 July 2002 (Arts. 11, 24(1)). If the State became a Member State at a later date, the Court will only have jurisdiction for conduct committed following the entry into force of the Rome Statute for that State. However, every State (including Member States that joined after 1 July 2002) may accept the Court’s jurisdiction for prior events (Art. 12(3)). A different temporal jurisdiction exists for the crime of aggression (see Arts. 15 bis and 15 ter).

Territorial and personal jurisdiction – the Court has jurisdiction for crimes committed in the territory of Member States (the territorial principle) or on board a vessel or aircraft registered in a Member State (the flag principle). In addition, the Court has jurisdiction over individuals who are nationals of a Member State (the active personality principle). The Court has similar jurisdiction with regard to States which are not members of the Rome Statute, but have accepted the Court’s jurisdiction on an ‘ad hoc’ basis (see Art. 12(3)).

Notwithstanding the above, if the case is referred to the ICC by the United Nations Security Council under Chapter VII, the Court has jurisdiction, according to the referral, regardless of the above ‘geographical’ limitations (the universality principle).

NATURE, FUNCTIONS AND INHERENT POWERS OF COURT

A court is each a freelance body that answers legal queries per principles and rules of law, and therefore the physical place wherever judicial proceedings occur. The common style of courtrooms and rituals related to proceedings reflects the precise nature and importance of the administration of justice, with the ordinarily high ceilings and formal decor reflective and reinforcing the concept of the impressiveness of the law. Judges sporting robes sit higher than and except those taking part in and observant the proceedings, whereas the disputing parties are placed in a very position of physical equality before the panel. All rise once the judges enter

and leave the room. At the Peace Palace within The Hague, seat of the ICJ, the solemnity of the area is any increased with a tier of glass windows that rises behind the judges.

The physical house and proceedings of no judicial bodies are significantly totally different from those of courts. for instance, international organization human rights pact bodies, established to watch implementation and compliance with a particular agreement, primarily do therefore by considering the periodic reports of states parties. every committee sits around a table wherever it meets with representatives of the state party whose report is below review, and conducts a "constructive dialogue" regarding problems with compliance. subsequently the committee could create observations and proposals supported the data it's received. There are not any person parties, witnesses, or judges. Similarly, there's no judicial setting or method for thought of individual communications by human rights committees that have the ability to receive them; the proceedings happen in a very session on a record while not representatives of the applier or state being gift or witnesses being detected. half-dozen the states that designed the procedures deliberately selected to not produce a court.

The inherent attributes of courts, just like the style of courtrooms, could derive from the judicial perform or the terribly definition of a court as associate degree freelance body giving binding selections per law on the queries conferred to that. Philip Allott identifies what he says are the placing characteristics shared by social establishments that are known by the word "court" and its equivalent in different languages." First, the court could be a self-contained social development, physically isolated and consistently distinct from different establishments. additionally, there are fastened roles vie by choose, party and witness, leading to a continuing that produces a call on the rights and duties of the parties. freelance courts conjointly monitor the principle of the rule of law that each one. Global and regional judicial bodies have been given the name, formal characteristics, and symbolic attributes of a court. While they are all alike in having guarantees of their independence⁴ and control over their procedures, they differ in their specific functions. Some of the courts, like the ICJ and the International Tribunal for the Law of the Sea ("ITLOS"), are primarily intended to settle disputes between states⁵. Other courts, especially the regional human rights courts, serve as compliance bodies and award reparations for human rights violations. A third group of international tribunals is designed to

⁴ Philip Allott, *The international court and the voice of justice*, Cambridge, 1996

⁵ The WTO Dispute Settlement Understanding, (a sort of arbitration)

enforce certain international norms, having jurisdiction to sit in judgment of individuals accused of international crimes and impose penalties on those found guilty. Finally, many international courts have been given competence to answer hypothetical or abstract questions of international law through rendering advisory opinions, a function close to law making.

DUTIES OF JUSTICES

ICJ justices have wide latitude to operate within the AMUN Statute of the ICJ, copies of which will be furnished to all ICJ Representatives. Justices will meet with the Director on the rest day of the Conference to go over the Statute and to establish their own internal rules of procedure.

Each justice, while “independent,” will still have a role-playing function. ICJ justices “retain” their citizenship with whatever state their school represents at the Conference. Justices not affiliated with a delegation will be assigned citizenship with a state. A justice’s citizenship is important, since it is frequently the case in the “real” ICJ that a justice from a particular country will side with the position advocated by their country of origin when that state comes before the ICJ, although they do not always do so. Thus, while ICJ justices are supposed to be independent advocates for the law, they often come to the Court with inherent biases based on their home country’s history, culture, religion and laws.

Justices will each have an opportunity to review the memorials submitted for each case. All justices will be expected to hear arguments and question the advocates in all cases on the docket. After each case is argued, the justices will retire to deliberate and to write opinions.

Justices should take the time to do preliminary research on the cases and advisory opinions. If Justices have difficulty accessing documents relevant to the cases or advisory opinions, they should contact the Secretary-General or the Director of the Court to request assistance⁶.

FINALITY AND BINDING OF JUDGEMENT

⁶ AMUN rules and procedure, Chapter 4 of international court of justice.

The final inherent powers that courts would possibly claim arise once a judgment has been rendered embody deciding that the matter is subject and agreeing to be certain by the judgment in future rulings (the principle of stare decisis). Declining to listen to a dispute as a result of the case has been determined antecedent, that is, applying the philosophical system of subject, follows from the categorical provision contained in most courts' statutes that choices are binding on the parties," however additionally looks inherent to the judicial perform of deciding cases. associated with this can be the ability to correct mistakes if it seems that a judgment was procured by fraud or error.

The question of stare decisis is a smaller amount simply answered." predictability within the law is valued, thus it's expected that the resolution of 1 dispute can lead courts to choose similar disputes identical manner. International courts do cite their previous judgments and reason from them. They additionally cite one another in a trial to supply some consistency in law of nations across courts and legal regimes. decide Shahabuddeen, however, considers that a legal obligation for associate degree international court to follow its previous choices would be "extraordinary" associate degreed has no foundation as an inherent power. If the ability exists, it should be expressly bestowed or tacit from the making instrument.

The specific functions of various international courts seem to influence the degree of reliance on precedent, with this influence being strongest in international criminal procedures. Notably, Article 21(2) of the ICC Statute states that the court "may apply principles and rules as taken in its previous choices."⁷ The prohibition on ex post facto criminalisation of conduct implies that there ought to be broad consistency within the judgments of criminal courts concerning the interpretation and application of the law. Indeed, the ICTY has aforementioned that, whereas there "is no provision within the Statute of the court that deals expressly with the question of the binding force of choices of the Appeals Chamber," "in the interests of certainty and foregone conclusion, the Appeals Chamber ought to follow its previous choices, however ought to be unengaged to depart from them for cogent reasons within the interests of justice." It seems that the Chamber viewed this deference to precedent as required by "a correct construction of its Statute, taking due account of its text and purpose.

⁷ Rome Statute of International Criminal court, Art.21(2)

Compliance courts conjointly categorical concern for consistency, since they're saying general rules for all states parties. The ECU Convention on Human Rights establishes inconsistency with a previous judgment together ground for relinquishment of a case from a Chamber to a Grand Chamber of the Court⁸. The ECTHR for its half has aforementioned that "while the Court isn't formally guaranteed to follow its previous judgments, it's within the interests of legal certainty, foreseeability, and equality before the law that it shouldn't depart, while not sensible reason, from precedents ordered down in previous cases."

CONCLUSION

It is miscalculation to judge the exercise of powers by all international courts within the same manner as a result of every court is made for a particular purpose or operate which operate shapes its powers, whereas all courts, by virtue of being courts, have inherent powers derived from their judicial functions-including the necessity for independence and management over the administration of justice-each court's specific functions are not to mention categorical and tacit powers that are particularly vital to fulfilling that operate. An understanding of the various functions and therefore the implications of them for the kind and scope of tacit powers is important to properly assess the work of the international judiciary. This text suggests that the functions of dispute settlement, compliance assessment, social control, and recommendation square measure totally different from one another and need the exercise of various powers. This text conjointly outlines a number of those variations, together with the utilization of interim measures in contentious cases however not in consolatory proceedings, the various standards of proof utilized in differing types of courts, and therefore the continuation of cases by compliance courts despite the death of the somebody or, in some instances, the agreement of the parties, however it's vital to acknowledge that this has been just a gap analysis. It ought to be thought-about a request to others fascinated by the work of international judgment to allow a lot of attention to the range of international judicial bodies and therefore the powers they exercise.

⁸ European Convention on Human Rights. Art. 30