

ILEG Study Notes 3

Understanding the International Court of Justice (ICJ)

The ICJ is the principal judicial organ of the UN. Unlike the permanent court of justice with the League of Nations, the ICJ is a part of the institutional structure of the UN. It was established under Article 7 and is one of the six principal organs. Its functions are defined in Chapter 14 of the Charter. Article 92 states that the court is the principle judicial organ of the UN. This is stated again in Article 1 of the ICJ statute.

How is the ICJ different from other international judicial bodies

1) It is one of the six principal organs of the UN (Article 7 of the UN Charter)

Therefore, it must participate and work toward the purposes and goals stated in the U.N. Charter.

2) It is on equal footing with other organs of the UN (each of which recognize the full autonomy of the others).

As opposed to the ICTY (International Criminal Tribunal on Yugoslavia and the ICTR (International Criminal Tribunal on Rwanda), which are subsidiary organs of the Security Council.

The maintenance of international peace and security is the primary purpose of the United Nations (Article 1, para 1 UN Charter). With this main purpose in mind Article 2 lays out the guiding principles to facilitate the attainment of this goal. One of which requires member states to seek a peaceful resolution to their disputes "in such a manner that international peace and security and justice are not endangered."

The list of appropriate methods to pursue peaceful settlement of disputes specifically mention judicial settlement (Article 33 UN Charter). This is clarified with Article 92 and Article 36(3). Article 92 states that the ICJ is the "principal judicial organ of the United Nations," and Article 36(3) states that legal disputes should be referred to the ICJ. These provisions confer the ICJ's role in the maintenance of international peace.

The court has two distinct procedures in the exercise of its jurisdiction:

1) Contentious Procedures -- main workload

2) Advisory Opinions

Advisory opinions are not specifically aimed at dispute settlement. By responding to legal questions, it can have a great pacifying affect whether there is a dispute or not. Difference from other international tribunals

The statute of the ICJ provides for a worldwide judicial system. It is open to all UN members.

Non-members are subject to Security Council conditions. This global reach and relevance are reflected in the composition of its members. The court has 15 judges who each serve 9-year terms and are eligible for reelection.

The judges are elected by the UN General Assembly and the UN Security Council with a simultaneous election -- no veto. It is decided by simple majority.

The court's membership reflects the main civilizations and legal systems of the world. Since the 1960's, the membership has been based on regional distribution. This is reflected in Article 9.

Composition

5 Western European / Other

3 Asian

3 African

2 Latin American / Caribbean

2 Eastern European

5 seats are for permanent member countries

The regional distribution is the same for the Security Council.

(5 African /Asian, 1 for Eastern European, 2 Latin American / Caribbean, Two Western European Other)

Distinguishing Feature

The ICJ has general jurisdiction. It can deal with any issue of international law.

Other courts / tribunals, for example, Law of the Sea Tribunals or the Appellate Body of the WTO, are presented with cases within a treaty regime. This constrains their ability to serve as a forum for matters of general international law. Such matters are reserved for the ICJ, which can take into account the development in international law across the spectrum of international relations. The existence of the court as a permanent institution (with regulated mechanisms and procedures laid down in the statute) facilitates the peaceful settlement of disputes that otherwise would not be settled or not settled as quickly. Permanency transforms into constancy.

One criticism of the court is that it can have length procedures, which can delay a judgement for years.

However, this criticism is unjustified because such delays are a result of procedural steps by the parties. Sovereign states cannot be prevented from using all the procedural steps at their disposal.

When parties have sought a swift settlement, the court has demonstrated the ability to act quickly (whether application or special agreement).

*If there is a will by the parties and no counterclaims.

For example, a case between Mexico and the USA took 14 months for a judgement.

This case was on a breach of the Vienna Convention on Consular Relations, when the US arrested, detained, tried, and convicted 54 Mexican nationals, sentencing them to death row without Mexico allowing its international legal obligations under Article 5 and 36 under the Vienna Convention. The ICJ operates within the framework of the United Nations. Under Article 94, the Security Council can take measures to ensure compliance. International jurisdiction is matched with responsibility and enforcement. However, it is very rare in the history of the ICJ that its decisions are not complied with, as judgments have been meticulously respected in the past. The American Journal of International Law has stated that the level of compliance has remained at the same high level in recent years while the court's list of cases has steadily grown.

The court has limitations in settling disputes peacefully.

The organs of the UN have defined roles.

Contentious Capacity

The court can only hear cases by states and only when all parties fall within its jurisdiction in one of the ways laid down in the ICJ statute.

The court capacity depends on the will of the states involved.

It is based on consent-- Article 36 of the Statute with its root in Article 2.1 of the Charter and the sovereign equality of states. It restricts the ICJ's ability to settle international disputes.

International organizations have no access to the contentious procedure.

Advisory Opinions

Organs of the United Nations and specialized agencies can request advisory opinions. This is specified in Article 96 of the UN Charter.

The General Assembly and Security Council can request opinions on all international law issues.

Specialized agencies can request opinions on issues relation to their specific areas.

The ICJ is the longest running international tribunal. It has rendered over 100 judgments across the globe on the widest range of legal issues. It has assisted international organizations with advisory opinions on a diverse and range of substantial legal issues.

The ICJ plays an important role in working for peace and security. There are numerous examples of the court's role in this area.

Some Examples

In 1986-- Border between Burkina Faso and Mali.

The Court secured a cease-fire, fixing the disputed boundary.

In 1994, Twenty-year conflict resolved between Chad and Libya. The dispute was over the aouzou strip (Northern Chad). Libyan forces evacuated the disputed area after the judgement under the supervision of Security Council appointed observers.

In 2001, the ICJ ruled on a dispute between Bahrain and Qatar over various islands and maritime waters. The judgement ended the dispute (which had threatened to escalate to violence numerous times). Both countries were grateful and referred to each other as "sister nations." Bahrain stated that the judgement "contributed to world peace." Qatar stated that there was a "new phase of good relations."

The jurisprudence of the court is a constant that states can refer to in solving disputes before they spiral or escalate. The court was asked to give an advisory opinion on nuclear weapons in relation to humanitarian law. The court stated that it could not rule either way on nuclear weapons being used in self-defense when the survival of the state is in question. However, the court ruled that the most appropriate method for addressing the legal status of nuclear weapons is complete disarmament. States have an obligation to pursue negotiations leading to nuclear disarmament under strict international control. The GA received the opinion well.

In 1986, the court ruled against the United States in a landmark case brought by Nicaragua. It condemned to United States for mining the harbors and supporting the Contras. The court ruled that the United States must pay reparations. The United States refused to pay.

In 2004, the court issued an advisory opinion that Israel's wall is contrary to international law. GA resolution 66/225 supported the opinion. The vote was 167 in favor with 6 abstentions and 7 negative votes. The 7 negative votes were cast by the United States, Canada, Israel, the Marshall Islands, Micronesia, Nauru, and Palau.

The ICJ has played an important role in preventative diplomacy through judgments, advisory opinions, and the progressive development of international law.