

THE EVOLUTION OF INTERNATIONAL COURT OF JUSTICE

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ABSTRACT

Are we all familiar with the work of law? This is known as one of the most important factors for a country to function properly.

Justice is being considered one of the last hopes of saving humanity and saving the proper functioning of all things that have the potential to be related to humanity. Whenever there is a dispute, even between the parties or an ongoing issue of common law, it has the power to question the formation of working conditions, even the law in progress. It also provides a dynamic perspective. It improves the working conditions of individuals and the public. Before I start this article, I want to make sure that this article is not only limited to a country's judicial system, but also a discussion of how things work in an international context and an international environment.

Law and order maintenance, modification, and resolution are displayed in the event of a problem occurring between the parties. Therefore, all these steps are done under one roof. This started with all the thoughts, but is it confusing? Don't worry. This article describes how the definition worked and happened in the evolutionary history of "International Court of Justice also referred as ICJ".

In addition, various members explain the composition and elements of the organization related to the international judicial system. And we will also discuss various cases deliberately raised on the international platform to pursue justice.

KEYWORDS

Justice, Court, United Nations, Judge, International Organizations

INTRODUCTION

Before beginning with the explanation of the working of the International Court of Justice, or how this judiciary works, let's understand what this judiciary system is all about, how it operates and also what the judiciary in layman language means. Let's take an example, we see in our daily life various social issues related to women specifically right? Be it dowry demand, marital rapes, sexual harassment at workplace, crimes related like robbery, theft, fraud etc we come across such news bearing such heinous activities. So after the committing of such activities what happens? Most probably your answer would be we call the cops to deal with such a person or if the culprits aren't available at the moment we ought to seek help from a law enforcement officer or anyone who's an officer and responsible to maintain law and order.

The judiciary also often resolves administrative cases, individuals, groups, or legal entities and disputes between government agencies regarding the application of law or the implementation of government programs. Most legal systems include the principle of national sovereignty, which prevents non-state litigants from filing proceedings without the consent of the government. This principle limits the right of the parties to the proceedings to seek remedies for government measures. Nevertheless, the right of citizens to be free from arbitrary, inappropriate and abuse of legislation has long been recognized and is the focus of administrative cases.

A set of rules governs which parties are admitted in court, what evidence is admissible, what proceedings are conducted, and what kinds of judgments are made when deciding

Judicial disputes. The judicial process involves the participation of many people. "If the judge is the central figure along with the parties to the discussion and their attorneys, but the jury is involved in the trial, witnesses, advertisements, bailiffs, executives and other individuals, including the jury, are involved."

Then do you know what happens after this?

The police officer presents such culprits in a place called Court for trials. The place where the judgment of right and wrong is decided with the help of evidence presented in front of the court. This whole procedure comes under a single roof of the coined term Judiciary.

So now I hope you're getting the term Judiciary and it's no more new to you. And in this judiciary system also if we talk especially about India, we have got a three-tier system, we have the Lower Court's/District Courts, then we have State/High Courts and above all, we have got the honourable Supreme Court. But this is just a gust of the court system in India; we'll not get much into the technicalities of the Organization structure.

But whenever the dispute takes an international turn and it doesn't get solved within the borders, then here comes into play an organization named the International Court of Justice (ICJ), which was formed under the United Nations Charter. This is an international Model of Judiciary where the cases are heard from across the borders. Talking about few aforementioned points are as follows:

1) Article 33 of the Charter of the United Nations Lists methods that rely on regional agencies and contracts for negotiation, inquiry, coordination, mediation, arbitration, and judicial resolution for peaceful resolution of disputes between nations.

Some of these methods include third party services. Coordination, for example, puts the parties to a dispute in a position where they can resolve their dispute, thanks to the intervention of a third party.

2) Arbitration is in the sense that the dispute is submitted to a fair third party decision or decision for a more binding resolution.

3) The rules that courts are stricter than arbitral tribunals are the same for judicial settlements (the methods that the International Court of Justice applies), except that they apply specifically to procedural issues.

In the next section, we'll discuss the history of the International Court of Justice.¹

WORDS SPEAK

¹ Sandy Ghandhi, *Human Rights and the International Court of Justice The Ahmadou Sadio Diallo Case*, 11(3) Human Rights Law Review 527-555(2011), available at https://www.google.com/url?sa=t&source=web&rct=j&url=https://www.corteidh.or.cr/tablas/r26998.pdf&ved=2ahUKEwiX5YP_0ZfyAhUwxzGGHQm3D5oQFnoECB8QAq&usg=AOvVaw26_IVawor-G3HQzyKiM2a1 last seen 03/08/2021.

HISTORY OF ICJ

Before beginning with the working of the International Court of Justice, let's get familiar with the history or we can say the origin of this International organization. The International Court of Justice was formed in 1945, but it started its functioning on 18th April 1946. It has altogether a great story while the formation of the International Court of Justice took place. You must be aware of the League of Nations, right?

So, before the dissolution of the League of Nations and the start of World War 2, the International Court of Justice was primarily known as The Permanent Court of International Justice whose prime work was to create peace between the disputes arising across borders. It was created during the Hague Peace conference of 1899. After the dissolution of this Permanent Court of International Justice came into effect the International Court of Justice, according to a fact it's the only governing body of the United Nations whose headquarters is not in New York but Hague, Netherlands.²

English and French are the official working languages of this Court. It has an interesting selection process for the judges.

In the next section, we'll discuss the working, organisational setup, and tenure of judges of the International Court of Justice in our next section.

ORGANISATIONAL SETUP

Let's begin with the organisation setup of the International Court of Justice. So the judges are elected by the United Nations General Assembly and United Nations Security Council simultaneously for a term period of 9 years and later on they can also reapply by following the process or the prescribed procedures. If we talk

² Philippe Couvreur, *A Brief History of the Origins of the ICJ*, 9 *The International Court of Justice and Effectiveness of International Law* 8, 9 (2017), available at <https://brill.com/view/book/9789004328860/B9789004328860-s003.xml> last seen on 02/08/2021.

about the bench of judges it consists of 15 judges in total, and one thing to note here is that the bench always commences only if there are 9 judges present in the Court during the hearing.³

As I discussed the election of members there is an interesting thing that one must know that there is also seat reservation regional based. Let me make it more clear for you by the following points:⁴

- “1)Africa - 3
- 2)Asia-3
- 3)Latin America- 2
- 4)Eastern Europe-2
- 5)Western Europe-5”⁵

So basically based on these reservations on a regional basis the elections take place. After the election of Judges comes into play the election of President and Vice-President of the International Court of Justice. It's an internally driven process without much interference from other United Nations bodies. Now we should keep in mind a few points as follows:

- 1) Only the (State) can be a party in the International Court of Justice, State here is considered and ie. equivalent to a whole nation.
- 2) After this point mentioned above the question arises that “Can an Individual be a party in the International Court of Justice?” The answer is yes. Let me explain how the person who wants to be a party in the International Court of Justice should be duly recognised by their own country's government and if that happens and his/her own country supports him/her, then he/she can definitely be a party, and we'll also be

³ INTERNATIONAL COURT OF JUSTICE, *The court - 2017-2021*, available at <https://www.icj-cij.org/en/court> last seen 01/08/2021.

⁴ Andrew Coleman, *International Court of Justice*, (21/05/2018) available at <https://www.encyclopedia.com/social-sciences-and-law/political-science-and-government/united-nations/international-court-justice> last seen 03/08/2021.

⁵ Ibid.

discussing a very famous case of Kulbhushan Jadhav, which came into the International Court of Justice in our upcoming section.

Some of the cases before the International Court of Justice are as follows:⁶

- 1) In 1999, the Democratic Republic of the Congo initiated a procedure against Uganda's illegal supply of weapons in its country because they share borders.⁷
- 2) In 2013, Chile initiated a program for Bolivia to pay attention to and use the water of the Silala river.⁸
- 3) In the same year, Nicaragua began a lawsuit against Colombia's sovereign rights and maritime areas.⁹
- 4) In 2014, Somalia filed a lawsuit against Kenya over the disputed area in the Indian Ocean.¹⁰
- 5) In 2016, Iran filed a lawsuit against the United States for allegedly violating the 1955 Treaty of Friendship.¹¹
- 6) A representative of Ukraine filed a complaint at the International Court of Justice on January 16, 2017, seeking to hold the Russian Federation responsible for acts of terrorism and discrimination against Ukraine.¹²
- 7) In 2018, Palestine seeks that the Court resolve its dispute with the US over the relocation of the US Embassy in Israel to the Holy City of Jerusalem.¹³

⁶ INTERNATIONAL COURT OF JUSTICE, *Pending cases - 2017-2021*, available at <https://www.icj-cij.org/en/pending-cases> last seen 03/08/2021.

⁷ Armed Activities on the Territory of the Congo, *Democratic Republic of the Congo v Uganda*, (2005) ICJ Rep 168.

⁸ Dispute over the Status and Use of the Waters of the Silala, *Chile v. Bolivia*, ICJ, Application instituting proceedings, 6 June 2016 available at www.icj-cij.org/doCKET/files/162/19020.pdf last seen 04/08/2021.

⁹ Territorial and Maritime Dispute, *Nicaragua v Colombia*, ICGJ 436 (ICJ 2012), ICJ GL No 124.

¹⁰ Maritime Delimitation in the Indian Ocean, *Somalia v. Kenya*, ICJ, Preliminary Objections, 2 February 2017, available at <https://www.icj-cij.org/public/files/case-related/161/161-20170202-JUD-01-00-EN.pdf> last seen 04/08/2021.

¹¹ Certain Iranian Assets, *Islamic Republic of Iran v. United States of America*, Preliminary Objections, 13 February 2019, available at <https://www.icj-cij.org/public/files/case-related/164/164-20190213-JUD-01-00-EN.pdf> last seen 04/08/2021.

¹² Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination, *Ukraine v. Russian Federation*, Provisional Measures, ICGJ 514 (ICJ 2017).

8) In 2019, The Gambia filed a lawsuit against Myanmar for violating the crime of prevention and punishment of genocide.¹⁴

Therefore, the purpose of reporting these pending cases is to let you know that even if it is the Supreme Court on an international platform. There are a total of 14 pending cases, involving different issues, and I have mentioned very few of them before. These cases were not as simple as they seemed after extensive discussions and records based on the guidelines provided by the International Court of Justice, and these cases were put on hold.

For example, in 1999, even Pakistan tried to accuse India of using our Mig21 fighter to shoot down its fighter, while Pakistan went to court, hoping to get a trial. However, the International Court of Justice clearly rejected or even did not recognize this case, saying that it is not within our jurisdiction.¹⁵

So, yes, we can say that even the International Court of Justice is restricted.

Because in one country, if something is correct in another country, it is also considered inappropriate.

Therefore, even the International Court of Justice has its own set of rules and agreements. Based on evidence and evidence, it makes judgments on specific cases. It is binding on every member or member state of the UN General Assembly, and that country automatically becomes a member of the International Court of Justice. According to statistics from the United Nations General Assembly and the International Court of Justice, there are currently 193 active member states (countries).

¹³ Relocation of the United States Embassy to Jerusalem, *Palestine v. United States of America*, ICJ, Application instituting proceedings, 28 September 2018, available at <https://www.icj-cij.org/public/files/case-related/176/176-20180928-APP-01-00-EN.pdf> last seen 04/08/2021.

¹⁴ Application of the Convention on the Prevention and Punishment of the Crime of Genocide, *The Gambia v. Myanmar*, Provisional Measures, 23 January 2020, available at <https://www.icj-cij.org/public/files/case-related/178/178-20200123-ORD-01-00-EN.pdf> last seen 04/08/2021.

¹⁵ Snehes Alex Philip, *How IAF shot down a Pakistani naval aircraft and killed 16 a month after Kargil in 1999*, THE PRINT (June 12, 2019, 8:16 AM), available at <https://theprint.in/past-forward/how-iaf-shot-down-a-pakistani-naval-aircraft-and-killed-16-a-month-after-kargil-in-1999/248868/> last seen 04/08/2021.

THE KULBHUSHAN JADHAV CASE

It was a way more complex case than we think the reason being the complexity of the case be judged by the fact that even in the International Court Of Justice this case was heard for more than 2 years consecutively and after 2 years and 2 months the final verdict was announced in the favour of India by the international court of justice.

“On legal grounds, the Jadhav case is a resounding victory for India and provides clarity to a country’s obligations under Vienna Convention of Consular Relations (VCCR). However, the question of its implementation continues to loom large given the outcomes in previous Vienna Convention of Consular Relations (VCCR) cases.”¹⁶

“Let us follow a timeline and understand the whole case in brief :

3 MARCH 2016- Kulbhushan Jadhav was arrested.

25 MARCH 2016- Our foreign affairs was informed formally about the arrest of Kulbhushan Jadhav from Pakistan Officials.

10 APRIL 2017- One of the military courts of Pakistan sentenced Kulbhushan Jadhav to death.

8 MAY 2017-India moved to the International Court of Justice for getting the stay on sentence to death and release of the charges that were imposed on Kulbhushan Jadhav falsely, acting as a defence.

WORDS SPEAK

¹⁶ Aarshi Tirkey, *The Kulbhushan Jadhav verdict: A certain win, with uncertain outcomes*, OBSERVER RESEARCH FOUNDATION (July 19, 2019), available at <https://www.orfonline.org/expert-speak/the-kulbhushan-jadhav-verdict-a-certain-win-with-uncertain-outcomes-53188/> last seen 05/08/2021.

9 MAY 2017- International Court Of Justice, fortunately, grants the stay on the sentence to death of Kulbhushan Jadhav and asks Pakistan to not remove the stay until the whole proceedings are completed.”¹⁷

Now after all of this India had great pressure to assure that Pakistan had done some violation of any humanitarian law or any international law, which Pakistan did let me explain how?

According to the Vienna Convention on Consular Relations Article 36 of the United Nations Charter, it was mentioned that access to a consular is a must whenever you arrest a person of foreign origin, which was violated because Pakistan didn't provide any such aid to Kulbhushan Jadhav.¹⁸

As we know the team was led by Harish Salve, he clearly stated in his argument even if the foreign person who is arrested is a spy or detective as Pakistan is claiming over Kulbhushan Jadhav, still, there is nowhere mentioned that he/she will be deprived of his/her rights to access the aid from consular, hence the whole case took a very strong turn. Article 36 of the Vienna Convention, according to India, does not allow for any exclusions. The travaux préparatoires, in their opinion, demonstrate that no exemption to the Convention was provided for situations of espionage, despite the fact that the issue of espionage was considered during the writing process. The travaux préparatoires demonstrate, according to India, that the drafters of the Convention regarded espionage to be covered by the rules regulating consular access. India claims that if Pakistan's theory is followed to its logical conclusion, a receiving State might justify the denial of rights guaranteed by the Vienna Convention by claiming acts of espionage.¹⁹

“In the judgement of the International Court Of Justice, Out of 16 judges, 15 judges agreed to the point that while giving sentenced to death to Kulbhushan Jadhav Pakistan bluntly broke article 36 of the Vienna Convention on Consular Relations.”²⁰

“Pakistan also came up with three objections against India, those were as follows:

¹⁷ The Hindu Net Desk, *Kulbhushan Jadhav Case: A timeline*, THE HINDU (Oct. 31, 2019, 6:53 PM) available at <https://www.thehindu.com/news/national/kulbhushan-jadhav-case-a-timeline/article28492569.ece> last seen 05/08/2021.

¹⁸ Vienna Convention on Consular Relations art. 36, *opened for signature* 24 April 1963, 596 U.N.T.S. 261

¹⁹ Jadhav (India v. Pakistan), ICGJ 515 (ICJ 2017), para. 69-70, available at <https://www.icj-cij.org/public/files/case-related/168/168-20190717-JUD-01-00-EN.pdf> last seen 06/08/2021.

²⁰ Ibid, at para. 149.

- 1) Abuse of Process
- 2) Abuse of Rights
- 3) India's allegedly unlawful conduct²¹

Luckily all of the three objections were again rejected from the end of Judges of the International Court Of justice. Pakistan repeatedly was debating not on the fact but a note that was forcefully written in the influence of police custody by Kulbhushan Jadhav stating that he is a spy of secretive forces of India hence the Vienna Convention on Consular Relations should not apply.

Interestingly this case was not debated on the fact that whether Kulbhushan Jadhav was a spy or not, whether Kulbhushan Jadhav should be released or not, these were no points of discussion anymore in the court. The debate was going on about whether the Vienna Convention or not?

Whereas India was debating on the fact that the Vienna Convention was broken, and not only this but on different counterparts, it was violated bluntly by Pakistan Officials. Contrary Pakistan officials were kept on the fact that a spy should not be part of the Vienna Convention, hence there was no violation of Article 36 of the Vienna convention.

So now Pakistan has two options left:

- 1) Either Pakistan respects the Judgement of the International Court Of Justice and provides Kulbhushan Jadhav with the defence lawyer of his choice and starts the trial from the very beginning.
- 2) Or Pakistan disrespect the Judgement of the International Court Of Justice and give the death sentence to Kulbhushan Jadhav (though it is not possible for Pakistan but just in case).²²

The main objectives of the International Court of Justice are as follows:

- 1) To settle international disputes/situations submitted by States to the International Court of Justice. In accordance with the principles of international law.

²¹ Ibid, at para. 40-66.

²² Ibid, at para 126-128.

2) Giving advice on legal questions to any state/agency authorized by the Charter of the United Nations.

Let's learn about the role it plays in maintaining international considerations and also underpinning the International Court of Justice defenses regarding the interests of international law as follows:

1) All Member States are required to comply with the judgment and proceedings of the International Court of Justice pursuant to Article 94, paragraph 1 of the Charter of the United Nations.

2) The Court's decisions show that the Court has played an important role in upholding international law.

3) It made the ruling including land border and sea border, territorial sovereignty, non-use of force, neutralization of terrorism, etc.

Therefore, the sole purpose of talking about these things is for you to understand that the International Court of Justice has its own set of principles by which the International Court of Justice operates without bias, and that if a State Party that violates the principles operation of the International Court of Justice, this State Party must face consequences in terms of severe sanctions and injunctions, etc. especially depending on the level of prohibition, etc.²³

MEMBERS OF THE ICJ :

The list of the members of the International Court of Justice are as follows:

S.NO.	Designation	Name	Origin	Tenure
1	President	MR.Joan E. Donoghue	USA	President as of 8 February 2021.
2	Vice-	Kirill Gevorgian	Russia	Vice-President as from 8 February

²³ INTERNATIONAL COURT OF JUSTICE, *How the Court Works - 2017-2021*, available at <https://www.icj-cij.org/en/how-the-court-works> last seen 04/08/2021.

	President			2021.
3	Judge	Peter Tomka	Slovakia.	re-elected as from 6 February 2021.
4	Judge	Ronny Abraham	France.	President of the Court from 6 February 2015 to 5 February 2018.
5	Judge	Mohamed Bennouna	Morocco.	re-elected as from 6 February 2015.
6	Judge	Antônio Augusto Cançado Trindade	Brazil.	re-elected as from 6 February 2018.
7	Judge	Abdulqawi Ahmed Yusuf	Somalia.	President of the Court from 6 February 2018 to 8 February 2021.
8	Judge	XUE Hanqin	China.	re-elected as from 6 February 2021.
9	Judge	Julia Subutinde	Uganda	re-elected as from 6 February 2021
10	Judge	Dalveer Bhandari	India.	re-elected as from 6 February 2018.
11	Judge	PatrickLipton Robinson	Jamaica.	Member of the Court since 6 February 2015.
12	Judge	Nawaf Salam	Lebanon.	Member of the Court since 6 February 2018.
13	Judge	IWASAWA Yuji	Japan.	re-elected as from 6 February 2021.
14	Judge	Georg Nolte	Germany.	Member of the Court since 6 February 2021. ²⁴

²⁴ INTERNATIONAL COURT OF JUSTICE, *Current Members - 2017-2021*, available at <https://www.icj-cij.org/en/current-members> last seen 04/08/2021.

These are the current members of the International Court of judges talking about the powers and salary given to these judges are as follows:

- 1) Base salary of each member of the International Court Of Justice annually is around US\$176,437, With a special allowance of US\$15000 for the President.
- 2) All the amenities that are provided to a top government official or a bureaucrat.

CONCLUSION:

As we come to the end of this article based on the development of the International Court of Justice, i.e. the ICJ, we have come across something like the history or origins of the International Court of Justice to why the International Court of Justice is necessary.

We also covered one of the most famous cases of Kulbhushan Yadav where he was forcibly arrested without warning and declared by the judges of the International Court of Justice, that it is a violation of article 36 of the Vienna Convention which is banned by Pakistani authorities.²⁵

After discussing in detail every minute of the case of Harish Salve charging only 1 to India, received a verdict in its favor. We then discussed the various pre-hospital members of the International Court of Justice, the salaries granted to Members, social or material facilities provided to its members. After a detailed minute-by-minute discussion of how the justice system works, then explain the three-tier system of the Indian justice system in layman's language.²⁶

After discussing the points mentioned above, I can definitely say that yes, we should trust the justice system, regardless of the fact that we have to be very patient when the matter goes to court. , but if you're right, yes. No one can challenge your honesty. It's a healthy baking process where you get called to court again and again. On the contrary, it is said that "Delay of Justice is Justice Denied" is itself a questionable statement that

²⁵ Supra 12, at para 20-32.

²⁶ THE INTERNATIONAL COURT OF JUSTICE: A HANDBOOK 25-27, available at https://legal.un.org/avl/pdf/rs/other_resources/manuel_en.pdf last seen 06/08/2021.

has its own pros and cons, but we absolutely must be patient and strong enough to do so. Face the consequences, no matter what situation you're in. .confronted in the hearing. Ongoing, the trials are conducted in the most adjudicative manner.²⁷

On this point, we come to the end of the article. And yes, I will end by mentioning that the Sun, the Moon, Justice and Truth cannot be hidden for long.



²⁷ Gregor Noll, *The International Court of Justice and Migration*, (Jan. 4, 2020), Forthcoming in Achilles Skordas (ed), *Research Handbook on the International Court of Justice*, Edward Elgar (2020), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3513844 last seen 06/08/2021.