

AN INTRODUCTION TO THE INTERNATIONAL COURT OF JUSTICE (2022). By Bhanu Pratap and Honey Dhawan. Published by Thomson Reuters. Pp 402, Price: Rs. 1225/-. ISBN 978-9-392-63068-2

IT IS rare for one to find books that are complete unto themselves when it comes to a domain as broad and universal as International law. “An Introduction to The International Court of Justice” is one such book. For a beginner it is certainly one of those books which provides a most comprehensive yet level headed understanding of International law. It does this by sticking very close to the structure and workings of the International Court of Justice and in exploring the court one gains a greater and perhaps more robust understanding of International law itself.

In the first chapter, an overview of the International Court of Justice (hereinafter referred to as ICJ), its creation, structure, powers, and methodology are provided. Beginning with an exploration of the Permanent Court of International Justice’s (hereinafter referred to as PCIJ) creation in 1920, the chapter delves into the ICJ’s genesis. Establishment details, including composition and jurisdiction, follow for the ICJ in the chapter. Discussed in the chapter are the ICJ’s procedure, pleadings, evidence, and judgment.

The chapter also delves into aspects of the existence of international law as a horizontal law unlike municipal law which conforms to the vertical hierarchy. This is to say that the States are sovereign and thus not bound by a supranational authority to adhere to its rules.¹ Thus International law is decentralised in nature and it is overtime that international society learnt to give it a more coherent form through treaties, conventions and other organisations. The PCIJ was preceded by the Permanent Court of Arbitration which in itself is a misnomer as the court was formed on a need-to-need basis.

The structure of the PCIJ was lauded by many in the community of jurists who even went on to recommend that said structure be incorporated into the ICJ. The failure of the PCIJ was not borne out of its structure but out of the circumstances surrounding the League of Nations. The advisory as well as the contentious jurisdiction of the PCIJ is something that is held in high regard even today by the ICJ.

Established in 1945 by the United Nations Charter, the ICJ as, per the Charter, acts as the principal judicial organ of the United Nations. As stated in the Statute, which forms part of the Charter, the ICJ’s functions, composition, jurisdiction, and procedure are all specified.

Understood correctly, jurisdiction over legal disagreements involving states rests with the ICJ. Jurisdiction in disputes for the ICJ rests on party agreement. States may

1 Nigel White, *The Law of International Organizations* 60(Manchester: Manchester University Press, 2005).

consent to the ICJ's jurisdiction by a variety of means, including, Dispute resolution involves an understanding between parties, A compromissory clause exists within a treaty; or under article 36(2),² an ICJ declaration.

Attaching the ICJ Statute to the Charter of the UN allowed for it to not only function as the prime judicial body of the UN but also as a legitimising factor that being a member of the UN contains the added attribute of accepting the authority of the ICJ. Article 103 of the Charter states that the Charter will prevail over all other agreements, this is another added element of superiority present within the Charter the benefits of which are also extended to the ICJ.³ The ICJ thus can coordinate with the other organs of the UN to undertake tasks which it ordinarily would not have had it been a body separate from the UN.

The chapter ends with an examination of the ICJ's importance within the broader context of international law. The United Nations ICJ has authority as the principal judicial body; its verdicts bind the disputants. Crucial in the advancement of international law, the ICJ has helped settle several contentious issues involving states. There were areas in the chapter that could have been better expanded such as the role played by the International Academia which was still in its nascent stages as far as the development of International law is concerned. The establishment of International Institutions certainly would have lent greater scope to the development of this academic discourse.

The second chapter of the book details the composition of the ICJ, governed by its Statute and Rules of Court, and the ICJ's procedure. The initial step in contentious case procedures is submitting an application. Following the initial filing, the counter-memorial can be submitted by the opposing party. Rejoinders and replies are the next phase of legal exchange between parties. Oral arguments follow once the pleadings have been finalized. Private discussions lead to an ICJ judgment being issued by the judges.

The impartiality of the judges is ensured through article 2 of the Statute of the ICJ which provides the criteria for the election of the 15 judges of the court. The division for election of the 15 judges is divided between continents with Western and Eastern Europe getting a combined six representatives, Asia is entitled to four despite having nearly 60% of the world population which is more than all the other continents

2 United Nations, Charter of the United Nations, Oct. 24, 1945, 1 UNTS XVI, *available at*:<https://www.refworld.org/docid/3ae6b3930.html> (last visited on Dec. 10, 2023).

3 *Ibid.*

combined. The nomination of judges is left to national groups who decide on the matter based on the consideration of regional imbalances.⁴

The composition and election of the judges again warrants the need for an expansion in the size of the ICJ. Were the method of election more expansive so as to include on the basis of population and also include measures to not undermine the minorities it would serve to better contribute the extent of the ICJ's reach in handling matters of International law. As it stands currently limited to the votes of the regions as well as the limited number of judges the ICJ can stand to grow more through an expansionary phase.

It is in the election of judges that an instance of the negation of veto power is found. According to article 10 paragraph 2 of the Statute, the vote of the Security Council is taken without any distinction between the permanent and non-permanent members. It is through this provision that to a certain extent, a more egalitarian form of representation is found within the UN which is not dominated by the permanent members.

It is from article 18 that the inference of their impartiality is drawn as one of the criteria outlined calls for independent judges which means that a judge is precluded from exercising any political or administrative function or engaging in any other occupation of a professional nature.⁵ They are also not allowed to preside over cases in which they had once before taken part as counsel, or advocate or an agent.⁶

The ICJ has three chambers to deal with issues of three kinds, those arising out of speedy disposal of business are present before The Chamber of Summary Procedure, those dealing with technical issues such as labour cases and communication are dealt with by the Thematic Chamber and finally, the matters brought forth by the consenting states are dealt by the Special Chamber. Just as an example of the Indian Supreme Court requiring subordinate courts or branches in different regions of India to cover its vast populace and argument can be made that the ICJ have multiple seats throughout continents in order to better facilitate its exercise of powers.

The next chapter deals extensively with the jurisdiction of the ICJ, *ration personae* or access to court determines the ICJ's jurisdiction when states file complaints. Party consent determines when the ICJ has jurisdiction over contentious cases. Jurisdictional consent from the opposing party is necessary for a state to pursue legal action at the ICJ.

4 Patricia Georget, Vladimir Golitsyn *et. al.* (eds.), *The Statute of International Court of Justice* 523 (3rd edn, Oxford University Press, 2019).

5 The Statute of ICJ, 1945, art. 16.

6 The Statute of ICJ, 1945, art. 24.

Multiple methods exist for states to grant jurisdiction to the ICJ. These include:

Special agreement: An accord unique in nature, a treaty exists between two states whereby disputes between them are submitted to the ICJ.

Compromissory clause: Disputes stemming from agreements are resolved through the ICJ according to a compromissory clause.

Optional clause declaration: A declaration made by a state according to Article 36(2) of the ICJ's Statute permits the ICJ to consider all legal conflicts involving the state and other states that have also declared their consent.

Based on other grounds, including the United Nations Charter or a Security Council resolution, the ICJ's jurisdiction may extend beyond the explicit consent of the parties. Less frequent than consent, these grounds exist. Since it guarantees that solely consented-to situations are heard by the ICJ, the court's jurisdiction based on *ration personae* is crucial. The ICJ seeks to obtain acceptance of its judgments from all parties involved in the dispute.

Article 40 of the ICJ Statute establishes the rules for submitting cases before the Court. Cases come before the court based on notifications or through written applications submitted to the Registrar. Either way, the subject of the dispute and the parties involved will be specified. The article derives its importance from its ability to lay down procedures. Also, parties to a dispute are made aware of the case against them and have the chance to respond.

Crucial details are present in article 40, worth paying attention to. First, the article allows for two different ways to bring cases before the ICJ: Through notification of a special agreement or *via* a written application. Seeking the ICJ's decision through a written application, a state may file a document.⁷ To be included in the application or special agreement, the subject of the dispute and the parties must be identified. Understanding the dispute's specifics and the relevant parties is made possible through this process.⁸

According to article 36, paragraph 3 of the ICJ Statute, a state accepts ICJ's compulsory jurisdiction "if the other party has reciprocated." Reciprocity is founded on the notion that states should only be subject to the ICJ's jurisdiction if they agree to submit to its authority when in conflict with other nations. Ensuring that neither party feels pressured into submitting to ICJ authority, this principle was formulated.⁹

7 The Statute of ICJ, 1945, art. 40.

8 *Ibid.*

9 The Statute of ICJ, 1945, art. 36.

Some have criticized the idea of reciprocity for allegedly treating states unfairly. Defending the principle of reciprocity, its necessity in ensuring the fairness and legitimacy of ICJ's jurisdiction is highlighted. The principle of reciprocity in itself takes away the discretion of the States by compelling them to reciprocate in nature the actions committed by their adversary. It must be noted that at times some states may exercise their inherent sovereignty not to submit their issues before the ICJ at a time like this the principle of reciprocity is neutralised.

By the United States, a unilateral declaration is made excluding from the court's jurisdiction "disputes pertaining to issues which fall under the domestic purview of the United States of America as decided by the United States of America." This means that the United States has the authority to reject the court's jurisdiction over any dispute deemed to be of domestic concern. The Vandenberg Reservation is a unilateral statement excluding court jurisdiction, only if all parties are involved in the treaty can the US submit the dispute to the court's domain. Criticism has been espoused at the Connally Reservation and the Vandenberg Reservation for being overly expansive, providing too much latitude for US refusal of court oversight.

With the ability to offer legal counsel, the ICJ's advisory jurisdiction extends to responses to queries from authorized UN departments and agencies. Distinct from the contentious jurisdiction, the advisory jurisdiction refers to the power of the court to provide guidance on legal matters.

From article 96 of the United Nations Charter and article 65 of the ICJ Statute, the ICJ is granted its advisory jurisdiction. Legal queries arising within the purview of these organizations are eligible for an opinion from the court, as specified in article 96 of the Charter. As per article 65 of the ICJ Statute, the court can offer advisory opinions on legal questions referred by specialized agencies authorized by the General Assembly.¹⁰

Legal questions covering diverse areas such as treaty interpretations, legitimizing use of force, and individual rights have been addressed through the ICJ's advisory jurisdiction. Although the court's advisory opinions are not directly enforceable in domestic courts, they are highly regarded interpretations of the law.

Another potential misuse of the ICJ's advisory role seems to emerge from this very power of advisory jurisdiction which can at times come off as being overly political. States' or groups of states' dominance on certain UN organs results in the court providing advisory opinions at their behest. The advisory jurisdiction's capacity to clarify complex legal matters and foster global law has been highly regarded. Yet its ability to also be influenced by the political schema present at the time is also a vulnerability.

10 United Nations, art. 65, Charter of the United Nations, October 24, 1945, 1 UNTS XVI, available at: <https://www.refworld.org/docid/3ae6b3930.html> (last visited on Dec. 10, 2023).

The fourth chapter walks onto the path of explaining the sources of international law. As per article 38, international conventions constitute the initial source of legislation. Treaties, conventions, protocols, and other accords are all included within this category. Treaties are legally enforceable once they have been ratified by a state. If bound by a treaty, the ICJ will use the provisions of that agreement.

Article 38 identifies international custom as the second legal source. A legal responsibility drives states to adhere to this practice. Consistency and uniformity in state practices result in the establishment of international custom. Established as being applicable, international customs will be used by the ICJ.¹¹ Listed in article 38, the third source of law involves the general principles of law recognized by civilized countries. Common to every legal system worldwide are these fundamental principles of law. The ICJ may resort to general legal principles when there is no relevant treaty or custom at hand.

Article 38 highlights judicial decisions and the teachings of eminent legal thinkers as the fourth source of legal principles. Scholars on international law, along with court decisions at the national and international levels, are all part of this. The ICJ turns to the teachings of publicists and judicial decisions for aid when determining legal precedents. In determining cases, the ICJ Court relies on article 38's provisions regarding legal sources. A diverse and evolving body of law, international law reflects the fact. Determining the most relevant legal sources, the ICJ possesses discretion in this regard.

From the next chapter onwards, it becomes an analysis of the decisions of the ICJ and the use of force. Taking some of the judgements of the ICJ to critically evaluate the decision as well as its repercussions serves as a starting ground to understand the effectiveness of International law.

The Nicaragua case, officially titled *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*,¹² is a landmark decision of the International Court of Justice (ICJ). The case concerned the legality of the United States' support for the Contras, a rebel group that was fighting against the Nicaraguan government. By its verdict, the ICJ made it evident that the United States had transgressed multiple international law requirements, such as the prohibition on the use of force, the principle of non-intervention, and the responsibility to refrain from acts of aggression. By violating the terms of the 1956 Treaty of Friendship,

11 The Statute of ICJ, 1945, art. 38.

12 *Case Concerning Military and Paramilitary Activities In and Against Nicaragua (Nicaragua v. United States of America)*; *Merits*, International Court of Justice (ICJ), 27 June 1986, available at: <https://www.refworld.org/cases,ICJ,4023a44d2.html> (last visited on Dec. 10, 2023).

Commerce, and Navigation between them, the US has been found in contravention of international law by the court.

Significant for various reasons, the Nicaragua case stood out, on the use of force by a superpower, the ICJ had ruled for the first time on a broader interpretation of the prohibition on the use of force. The court's decision on the case greatly clarifies on the principle of non intervention.

The Nicaragua case faces criticism due to its alleged bias toward Nicaragua. A detailed examination of the case's specifics and applicable legislation led the court to issue its ruling. Internationally, the court's decision has been a turning point in the evolution of laws regarding state intervention and the utilization of force.

Also significant for international law's development, is the decision on how the ICJ's interpretation on the use of force prohibition and non-intervention principle has influenced subsequent cases. International law's central tenets, including the use of force and intervention, have been clarified by the decision. The Nicaragua matter proved to be intricate and contentious. Despite the outcome, the ICJ's judgment was a watershed moment in the evolution of International law.

The court has wielded influence even with the exercise of its advisory jurisdiction as seen in the case of *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (2003-04). In this case, Israel had decided to establish a wall between itself and Palestine.¹³

The court ruled the construction illegal under international law. Through its findings, the court highlighted that the wall violated various international law commitments. Several reasons made the court's decision significant. This was the initial decision from the ICJ concerning the legitimacy of walls built during the occupation. Subsequent decisions have been influenced by a broad reading of the rule against seizing land by military power, which the court upheld earlier. Self-determination, a fundamental rule of international law, gained further clarity through the court's ruling.

The decision was met with opposition from those who believe it is too generous to the Palestinians. A thoughtful examination of the facts and legal precedent has helped underpin the court's choice. Showcasing significant influence on the handling of occupation issues, the court's decision stands as a crucial step forward in international legal evolution.

The ICJ's decision in the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* case proved to be a significant step forward for the

13 Advisory Opinion Concerning *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, International Court of Justice (ICJ), July 9, 2004, *available at*: <https://www.refworld.org/cases,ICJ,414ad9a719.html> (last visited on Dec. 5, 2023).

Palestinian cause. The decision validated the Palestinians' claims and discouraged further Wall-building by Israel. The development of international law hinged upon this particular choice. Influential in future cases is the ICJ's interpretation regarding territory acquisition via force and self-determination principles. The decision has improved our comprehension of the Law on Occupation of territory.

The ICJ judgment inside the Kulbhushan Jadhav case turned into a considerable victory for India. The court held that Pakistan had violated the Vienna Convention on Consular Relations by denying India consular access to Jadhav. The court additionally ordered Pakistan to release Jadhav or to effectively review and reconsider his conviction and sentence.¹⁴

The court's observations were primarily based on a cautious evaluation of the facts and the regulations. The court determined that Pakistan had violated article 36 of the Vienna Convention, which guarantees consulars get the right of access to nationals of different states who are arrested or detained. The court additionally found that Pakistan did not offer Jadhav with effective overview and reconsideration of his conviction and sentence, as required through article 14 of the International Covenant on Civil and Political Rights.

The court's decision was welcomed by India, which had at length argued that Jadhav became the sufferer of a "sham trial" and that he had to be subjected to unfair treatment. The stance was also welcomed by way of human rights organisations, who had criticized Pakistan's treatment of Jadhav. However, the court's selection was no longer without its critics. Some critics argued that the court had overstepped its authority by ordering Pakistan to release Jadhav. The actions of the court to bring Pakistan within its jurisdiction have been a contentious point for some who believe that this submission of jurisdiction was obscure and stretching thin on its own reasoning. Others argued that the court's choice was based on a fallacious interpretation of the Vienna Convention and the International Covenant on Civil and Political Rights.

Despite these criticisms, the ICJ judgment in the Kulbhushan Jadhav case was a landmark decision that has had a sizeable effect on the development of International law. The decision has helped to clarify the regulation on consular access and has set a crucial precedent for future instances regarding the remedies available to individuals as well as states.

In conclusion it becomes ever relevant not only in the study of International law but also in general parlance of law that one understands the structure as well as the working of international bodies such as the ICJ. This book effectively highlights the

14 Jadhav (*India v. Pakistan*) available at : <https://www.icj-cij.org/case/168> (last visited on Nov. 20, 2023).

importance that is held by the ICJ in International law, through the elaboration of its jurisdiction, and the landmark cases judged by it the book is able to outline for us the unique role ICJ plays along with the steady evolution of International law itself. Despite its criticisms a body like ICJ is proof of achieving peace through means other than the use of force and it is worthy enough on this basis for humanity as a whole to continue experimenting with organisations like the ICJ than resorting to war. It serves as a well-made and comprehensive study for those seeking to enter the world of public international law and further their understanding of it. In particular it would fare well for students pursuing law who wish to understand the bare minimum structure that exists within the realm of international law.

*Vishal Sharma**
*Sourish M Pillai***

* Assistant professor of Law, Bennett University.

** Student, Bennett University, School of Law.