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| Forum: | Legal Committee |
| Issue: | Taking measures to inspect the liability of international judicial bodies |
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| Position: | Deputy Chair |

Introduction

The idea for an international judicial body first came to being in 1305. Such a proposal although at the time not taken seriously by many was established 600 years later. The idea of an international court of justice in the modern political world was proposed in 1899 at the First Hague Peace Conference and shortly after the first International Court the Permanent Court of Arbitration was established. Since then it seems that the corruption in these courts is growing and their effects are dwindling. With global connectivity higher than ever, it is expected that these organizations would be in better shape. However, due to key problems which will be addressed in detail, these organizations fail to function as intended.

Even though some of these reasons are not specific to international judicial bodies and show themselves in other supranational organizations, they mostly hinder the effectiveness of these bodies. The only P5 country in the UN that accepts the jurisdictions of the International Court of Justice is the United Kingdom which shows how countries' national interests create a divide and these international bodies this problem leads to a lack of action which is prominent in most human bodies however it is contradictory that a Judicial body is in such a passive state. Forcing countries is not an option in the UN so the mechanism to make countries obey the judicial Decisions by the international court of justice most of the time followed because of the economic and political repercussions that would be faced if these decisions were not followed. Although these consequences that decrease a country's reputation may seem like a big deterring factor to violating the rules of these International judicial bodies, it leads to countries rejecting or accepting jurisdictions based on which case goes against their national agenda less. Another modern problem with the international judicial bodies is bias; it seems that the judges and the prosecutors follow the interests of their Nation rather than striving for Global Unity. This issue is crucial because if not solved it could hinder the globalization process that the world is in currently and it will also hinder the relations between countries and opinions concerning international bodies. This issue also directly correlates with the legal committee because it concerns the decisions made by judicial bodies and their effectiveness and bias. It is expected from you delegates to find solutions to these issues considering the UN values.

Definition of Key Terms

Court: *“a place where trials and other legal cases happen, or the people present in such a place, especially the officials and those deciding if someone is guilty”* (Cambridge Dictionary)

Arbitral tribunals: *“a tribunal set up to settle a dispute by arbitration”* (Collins Dictionary)

Quasi-judicial institutions: *“having a partly judicial character by possession of the right to hold hearings on and conduct investigations into disputed claims and alleged infractions of rules and regulations and to make decisions in the general manner of courts”* (Merriam Webster)

International judicial bodies: International judicial bodies are a general term used for International Courts, International Tribunals and International Quasi-judicial Institutions

Supranational: *“involving more than one country, or having power or authority that is greater than that of single countries”* (Cambridge Dictionary)

Nuremberg Trials: *“Nuremberg Trials, series of trials held in Nürnberg, Germany, in 1945–46, in which former Nazi leaders were indicted and tried as war criminals by the International Military Tribunal.”* (Britannica)

International Criminal Tribunal for Rwanda: *“The International Criminal Tribunal for Rwanda (ICTR) is the first international court of law established to prosecute high-ranking individuals for massive human rights violations in Africa. The purpose of this court is to prosecute those allegedly responsible for the 1994 Rwandan Genocide.”* (legal.un.org)

Judge: *“A public official authorized to decide questions brought before a court”* (Merriam Webster)

Prosecutor: *“a legal official who accuses someone of committing a crime, especially in a law court”* (Cambridge Dictionary)

Customary International Law: *“Customary international law refers to international obligations arising from established international practices, as opposed to obligations arising from formal written conventions and treaties. Customary international law results from a general and consistent practice of states that they follow from a sense of legal obligation.”* (cornell.edu)

Rwandan Genocide: The term "Rwandan Genocide" refers to the systematic killing of more than 800,000 members of the ethnic Tutsi and politically moderate Hutu in Rwanda under the command of government-sponsored groups of Hutu extremist military and police.

General Overview

The First International Judicial Bodies and the Issues with the International Court of Justice

The first international judicial body was the Permanent Court of Arbitration; it was founded at the first Hague Peace Conference. 23 years later the Permanent Court of International Justice was established under the League of Nations; however, due to the ineffectiveness and the bias of the League of Nations, the Court did not have much authority and favorable regard. After World War II, with the formation of the United Nations, the International Court of Justice was also established. The International Court of Justice was in a more favorable situation than its previous counterparts because of the importance the United Nations put into equality and representation. 60 years later it faces many problems and its success is essential to the survival and development of the world in the twenty-first century. Unfortunately, the Court's influence is waning after more than 60 years of existence. This piece makes the case that several crucial changes must be made to the ICJ structure to restore the influence and efficacy of the Court.

Issues must be resolved as part of these reforms: the election and reappointment procedures for ICJ judges, the potential conflict of interest caused by the permanent members of the UN Security Council serving on the Court, the question of the Court's mandatory jurisdiction, and the appointment of specially appointed judges in accordance with Article 31 of the Statute of the Court. The International Court of Justice is the "primary judicial arm" of the United Nations and is tasked with two main duties: helping to settle international conflicts between nations and giving advice to particular international organizations. The ICJ's legitimacy and impartiality have nevertheless been jeopardized by problems relating to the selection and reappointment of its judges, the participation of permanent members of the UN Security Council in the ICJ, the Court's mandatory jurisdiction, and the designation of specially appointed judges by parties before the Court.

Choosing the Unbiased Prosecutors and Judges

This key part of the international judicial system has been thought of since the first time the idea was put into action. Although the idea of letting the countries vote on the election of the judges may seem like a way to solve the issue of bias it may lead to more of it. Countries most of the time push for judges that will further their causes because of the power dynamics between them in the Security Council. A clear example of this may be seen in the judges of China and Russia voting against the verdict of the International Court of Justice against Russia's invasion of Ukraine.

The Effectiveness of International Trials

The effectiveness and necessity of international trials are at an indisputable level; however, this does not mean they have no issues. The Nuremberg Trials in 1946 and the International Criminal Tribunal for Rwanda have proven to be effective in their verdicts on atrocities committed by nations or a group of people. The Nuremberg Trials are an international military tribunal conducted after the defeat of the Axis Powers in 1946. It can be seen as a great example of how international judicial bodies can operate swiftly and fairly. The Nazi generals and leading party members were tried and sentenced for their crimes against humanity and the prosecutors were English, French, American, and Russian. The effectiveness of the trial could also be seen from the fact that after the trials were conducted there were polls that asked German people if they had found the decisions fair and just. 76 percent of the Germans that took the survey agreed that the decisions were justified so Nuremberg can be seen as a success in the development of international law and trials. However, Nuremberg had a key difference from the trials that would be held in the future and that was one side was defeated. The International Criminal Tribunal for Rwanda similarly was established after the genocide was over and the perpetrators lost power. Although it was effective, these two cases do not signify how most of the legal processes go. Overall these two events did not face many of the same problems that modern judicial bodies are facing because there is no country to deny the verdicts or hinder the process so it was more one-sided.

Croatia vs Serbia Genocide Case and Decisions

Croatia vs Serbia Genocide case began when Croatia accused Serbia of committing genocide. The case went on for many years but in the end, it was closed due to a lack of evidence on both sides. Some perceive this event as a failure of international law however events such as these also show the unbiased nature of international law treating each country fairly although in the past the court has made verdicts against Serbia in this case it was decided that it would not be fair due to the lack of evidence.

Decisions of the International Court of Justice on the War in Ukraine and Countries not Following Verdicts

The current situation in Ukraine has also found its part in international law. The International Court of Justice has decided that *“Russia must suspend the military operations launched in Ukraine on 24 February immediately; Russia must ensure that any military or irregular armed units directed or supported by it, and any organizations and persons under its control take no steps to advance the military operations; Both parties must refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve”*. “These are only based on the Genocide Convention because neither Ukraine nor Russia accepts the ICJ’s compulsory jurisdiction. The Genocide convention *“obliges state parties to prevent and punish genocide and gives the Court jurisdiction over disputes between parties relating to ‘interpretation, application or fulfillment of the Convention.’*” (europarl.europa.eu) It is clear from both

countries not recognizing the ICJ's compulsory jurisdiction that the trust in the international judicial bodies are not widespread and this lack of trust may lead to inaction at times of need.

Major Parties Involved and Their Views

International Court of Justice (ICJ)

The ICJ is the sole international court that decides on international conflicts between countries, and its decisions and opinions are the main sources of international law. The International Court of Justice is at the heart of this issue because of it being the main judicial branch of the UN.

The United States of America (USA)

Although while repeatedly reaffirming the importance of international law, the government of the United States has repeatedly ignored some of the jurisdictions made by the International Court of Justice due to similar reasons that Russia and China have

United Kingdom

The United Kingdom is the only P5 member state of ICJ's compulsory jurisdiction- This stance is highly beneficial on the issue compared to other states because they have accepted the decisions of international law even if it goes against their country's agenda.

Russian Federation

Russia as a P5 member has had a long history of not following the international court's rulings finding them biased and saying some are breaches of their sovereignty. The current example of this case lies in the Russian invasion of Ukraine where *"the judges from China and Russia voted against the first two provisional measures directed at the Russian Federation. In their declaration, annexed to the Court's conclusions, they essentially support the Russian interpretation that the ICJ does not have jurisdiction since the issue of concern is one of state recognition and use of force in international law, which does not fall within the scope of the Genocide Convention."* (europarl.europa.eu) Russia, much like China, calculates the negative effects of following or breaching international law and takes a stance accordingly. This behavior highly damages both the country's reputation and the belief in international judicial bodies. Although sometimes Russia does follow the international legal process an example of this case may be the Georgia vs Russia case where Russia was accused of racially discriminating behavior and supporting terrorist organizations. Russia made four objections and the second was upheld by the court so the case could not proceed to the merit phase.

People's Republic Of China

China, although for many years has not recognized the decisions of the International Court of Justice, is now investigating the rulings on a case-by-case basis. This new approach is a recognition of how the costs of denying the rulings outweigh the costs of accepting it from a political or an economic standpoint. However this new approach has not solved the issue as a whole because the Chinese government still occasionally denies the International Court of Justice's rulings. The latest case may be the ruling against Russia's investigation of Ukraine in which the only judges that ruled against this ruling was Chinese and Russian, further leading to questions about the biases of the judges and prosecutors serving at international judicial bodies. China has rejected the mandatory rulings of the International Court of Justice however it is not the only country to do so. Of the P5 permanent members of the UN Security Council, only the United Kingdom has done so as of now.

China also hasn't agreed to any of the UN human rights treaty organizations' individual or interstate communication protocols (of the other P5 countries, France, Russia, and the UK have accepted some, but the US hasn't). China was one of only seven nations (together with the US) who voted against the creation of the International Criminal Court (ICC) in 1998, despite its extensive participation in the negotiations of the Rome Statute.

Serbia

As one of the countries that was a part of the former Yugoslavia Serbia has been in two major cases of international courts. The first being International Criminal Tribunal for the former Yugoslavia and the second being Georgia vs Serbia genocide case. Both of these cases played big roles in the involvement of Serbia in this issue. The International Criminal Tribunal for the former Yugoslavia intended to punish the war criminals for many unwanted events such as the Srebrenica massacre. Serbia being one of the countries which had the most war criminals prosecuted were not happy with the results but the world's eye being turned to the region there was no room for Serbia to not obey the rulings. In the Georgia vs Serbia case there was insufficient evidence on both sides so the case was closed. The case being closed is mostly in favor of the national goals of Serbia because they were the ones accused.

Croatia

Croatia, much like Serbia, is a country that was part of the former Yugoslavia and took part in two major trials. Croatia's view of international law is mixed because the Georgia vs Croatia case was closed against the wishes of Croatia because they failed to provide enough evidence for a genocide.

Timeline of Events

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| 18 May 1899 | First Hague Peace Conference |
| 1899 | The establishment of Permanent Court of Arbitration |
| 1922 | The establishment of the Permanent Court of International Justice which was closed in 1946. It was the predecessor of the International Court of Justice |
| June 1945 | The International Court of Justice was established with the Charter of UN |
| April 1946. | The International Court of Justice began operating |
| 1946 | Nuremberg Trials being one of the first international tribunals took place |
| 1 January 1994 | International Criminal Tribunal for Rwanda |
| 12 August 2008 | Russia vs Georgia case |
| 15 October 2008 | Russia vs Georgia case was halted due to the court upholding Russia's objection |
| 2022 | The verdict of the International Court of Justice on the Russian Invasion of Ukraine |

UN Involvement

Most of the International judicial bodies such as the International Criminal Court, International Court of Justice and International Criminal Tribunal for Rwanda were established and backed by the UN. It is hard for judicial bodies to become international without the UN because it might be the only place that most of the

world governments gather equally in unity. The United Nations is keen on upholding international law in different parts of the world via peacekeepers and officials of the UN especially in war torn areas where war crimes are common. The United Nations sets up international tribunals when it's necessary and encourages all its member states to adhere to the international law.

Relevant UN Documents

- International Court of Justice preliminary decision in Ukraine v Russia- 16 March 2022
- International Criminal Tribunal for Rwanda Security Council resolution 955, 8 November 1994
- Charter of the United Nations 26-June-1945 Which **contains the formation of the International Court of Justice**

Treaties and Events

The formation of the Permanent Court of International Justice

The formation of the Permanent Court of International Justice was a basis for the foundation of the ICJ. The Permanent Court of International Justice's problems were very similar to the League of Nations, the UN like organization founded after WW1. It was not giving enough representation to its members so it was also replaced like the League of Nations with a more representative and fair body.

The Formation of the International Court of Justice

The formation of the ICJ is a key event because the ICJ is at most times at the core of the debate because it is the most recognized international judicial body. Its formation was after WW2 nearly at the same time with the formation of the United Nations.

The Nuremberg Trials

The Nuremberg trials are mentioned in the general overview part it is a major event when talking about international law because it is one of the first international military tribunals that is considered successful by the citizens of the prosecuted country as well.

Rome Statute

The Rome Statute of the International Criminal Court was an agreement concerning the treatment of international criminals putting responsibility on states to dictate the international law. The United States, China, Israel, Iraq, Qatar, Yemen and Libya voted against it although US and China pushed for it when in its

foundation process.

Evaluation of Previous Attempts to Resolve the Issue

Letting the member nations choose judges

One may argue that all the nations having a say in how the judges would be selected would lead to an unbiased court, however it is clear from none of the P5 recognizing the verdicts of the ICJ other than the United Kingdom that this solution clearly fails.

Trying to create consequences for the countries that do not adhere to the international law

As of now international law and International Court of Justice's verdicts are breached occasionally when they contradict the country's interests. Countries only follow them after calculating their effects and the political and economic costs of not following them. This leads to an overall increase in injustices and makes international judicial bodies ineffective so alternative consequences may prompt countries to follow international judicial bodies and adhere to their verdicts.

Sending judges and prosecutors from different countries

This is a direct result of the current election process of the judges in the International Court of Justice. Countries most of the time prefer to send judges from the ethnic majority of their country although this is intended in order to have diverse opinions and an unbiased court most of the time the judges seem biased toward their own country and this leads to overall lower trust for the international judicial bodies.

Possible Solutions

Making Polls in the countries involved with the verdicts

Although this is an approach that has been tried before after the Nuremberg trials, which was an international military tribunal, its effectiveness would be amplified in the information age due to how much easier communication has become through technology and globalization.

Having a different system of choosing judges

It is clear that one of the core problems with the international judicial bodies is how the judges and the prosecutors are elected. The ICJ elects its judges by voting in the General Assembly and the Security Council although this may seem like an efficient way it is clear that the countries try to get judges that will support their own causes elected. For a precise solution a new unbiased election system must be put into

place.

Sending inspectors from different nations to check the potential biases of the judges

This might be a key part in determining the allegiances of the international judicial bodies. It is clear that most countries do not trust the decisions of the international law or at least do not find them beneficial to follow so allowing inspectors to judge the authenticity of the court for certain periods of time might prompt countries to follow the guidelines or at least be ready to face more dire consequences if the laws are breached.

Setting clear boundaries when it comes to upholding international law with regards to national sovereignty.

This is a crucial part of the issue and although countries in the past have decided to set clear boundaries national sovereignty is still loosely used when it comes to the jurisdictions of the international courts so it might be worthwhile to clearly define these terms by setting boundaries for where they are applied or not.

Notes from the Chair

Although it may be tempting, please keep in mind that trying to give more authority to the international judicial bodies is not a viable solution because the United Nations would not want to go against the sovereignty of its member nations. Also these international judicial bodies, although lacking, are not nonessential; even if there are supporters of this view, shutting them down entirely is not an option.

Useful links for further reading:

- <https://www.icj-cij.org/en>
- <https://unictr.irmct.org/>
- [https://www.europarl.europa.eu/RegData/etudes/ATAG/2022/729350/EPRS_ATA\(2022\)729350_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2022/729350/EPRS_ATA(2022)729350_EN.pdf)
- <https://www.icj-cij.org/en/case/140>

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