Page 1405 - 1417 **DOI:** *https://doij.org/10.10000/IJLMH.116265*

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 6 | Issue 6

2023

The Need for International Court of Justice to Evolve

SHIVAM BOSE[1]

ABSTRACT

This paper seeks to examine the recent trend in international law of choosing to approach alternate judicial bodies instead of the judicial arm of the United Nations, the International Court of Justice. Multiple reasons exist for this, but maybe the most important is the inability of individuals and organisations to approach the ICJ. Would allowing non-State actors to approach the ICJ improve its standing in the international forum and add to its docket and help enhance international law principles?

Keywords: *International Legal Personality, States, treaties, UN Charter*.

I. INTRODUCTION

"1. Only states may be parties in cases before the Court."[2]

Article 34 of the Statute of the International Court of Justice limits who might approach the International Court of Justice (ICJ) for resolution through court proceedings. Similarly, it also limits who might be brought before The Court for violation of any one or multiple international laws. The limitation here is one has to be a 'State' to be a party to a dispute.

The Court further clarifies that its jurisdiction extends to any matter the parties refer to it, any matters relating to treaties and conventions in force or those matters it is specifically empowered to litigate over under the UN Charter. Clearly, the drafters of the ICJ Statute wanted The Court to have extremely wide and overarching powers in order to cement it as the highest judicial authority in the world by allowing for the court to be functional where necessary.

On the other hand, the restrictive nature of who can approach the ICJ, that being 'States', would have been sufficient for the time, but as globalisation has led to a rise of international organisations and non-state actors, it might be time to amend the Statute and allow for these bodies to directly approach the court as parties.

The Statute already recognises the importance of International organisations. The additions of Article 34(2)[3] shows that the International Forum is ready to accept international organisations

[1] Author is a LL.M. Student at University of Sydney, Australia.
[2] United Nations, *Statute of the International Court of Justice*, 18 April 1946, Article 34.
[3] United Nations, *Statute of the International Court of Justice*, 18 April 1946, Article 34(2).

 [ISSN 2581-5369]

as valid entities with enough resources to gather and provide usable evidence to the ICJ.

Article 34 also bars individuals from approaching the ICJ as parties, this forces individuals or any other private entity to choose other redressal mechanisms. In the current age, the Court is losing influence as the 'World Court' not only because of the rise of other dispute resolution mechanisms, but also because it continues to exclude a majority of the entities active on an International level, i.e. private entities. Without their inclusion, the ICJ will continue to lose its importance and popularity.

The ICJ derives its authority from the consent of States and from the laws and treaties practiced and accepted by States. However, laws cannot affect the inanimate idea that is a State, they act and affect the people living within those territories, the people who have to abide by these rules. When the people who are directly influenced by these rules are unable to approach the only court with jurisdiction over these matters, whether as individuals or as a conglomerate, then the importance of the court slowly begins to diminish.

(A) What is a State?

States are the primary subjects of international law and possess certain inherent rights and duties on an international forum. The criteria for statehood is laid out in the Montevideo convention,[4] with the main points being enshrined in Article 1. A territory must possess a permanent population, a defined territory, a government and the capacity to enter into relations with other States. However, attaining the status of Statehood goes beyond these 4 obligations, a territory must be recognised by other States in order to truly be accepted into the international fold. Many territories around the world have declared their independence from recognised States, yet are not recognised as independent States with rights and duties.

Article 4 of the United Nations Charter states that membership to the UN is open to all peace loving nations who can meet the obligations of the UN Charter. However, applications for joining the UN must first be vetted and cleared by the Security Council, with positive votes from 9 members of the Council as long as none of the Permanent members object. After this approval, the application is brought before the UN General Assembly where it must receive two-thirds of the votes from the member States to be accepted for membership into the United Nations.

Going through these arduous processes allows a country to be a party to the UN and enjoy the rights that come with that status, such as the right to enjoy their sovereignty and practice

[4] *Convention on the Rights and Duties of States,* opened for signature 26 December 1933 (entered into Force 26 December 1934) < https://www.ilsa.org/Jessup/Jessup15/Montevideo%20Convention.pdf>

 [ISSN 2581-5369]

whatever style of government they may choose. Furthermore, it also receives the right to be a party to the International Court of Justice[5] and use the facilities provided to States for adjudication.

The ICJ is known as the World Court as it is the judicial organ of the UN and has held great power since its inception. Many of the decisions of the ICJ have been instrumental in solving international disputes and was only permanent International Court that existed at the time. Like all sources of international law, States have to opt into the Jurisdiction of the ICJ[6]

II. INTERNATIONAL LEGAL PERSONALITY AND THEIR RIGHT TO APPROACH THE ICJ

Most scholars continue to advocate that States be the only bodies with international legal personalities. Thus, a State is considered a moral person that speaks on behalf of all its people. Similar to how a corporation is considered a legal entity in domestic law, States embody that role in international law, representing their actions and the actions of their people.[7]

The principle purpose of International Law prior to the 21st Century was to maintain peace and harmony between nations by restricting State Actions. The development of Human Rights Law at the end of the 20th Century brought forth the question of individuals as legal persons under international law. The granting and protection of human rights originally fell upon the individual States to govern and enforce themselves, but subsequent documents and treaties[8] not only insisted upon the granting of certain rights to individuals, but also directed States on how to protect and implement these rights.

Does this action mean individuals should now have equal rights in an international adjudication process to protect the rights granted to them? While it is true that individuals are affected by International law, the ICJ has stated that not all subjects of a law are identical in nature nor the extent of their rights.[9] Thus, it can be said that States possess full international personality as a means of their existence, other subjects of international law have more limited rights, only up to the point that States allow.[10]

---

[5] United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI, Article 92.
[6] United Nations, *Statute of the International Court of Justice*, 18 April 1946, Article 36.
[7] Hans Aufricht, 'Personality in International Law' (1943), 37 (2), The American Political Science Review, 217, 219
[8] International Committee of the Red Cross, *Geneva Convention relative to the Protection of Civilian Persons in Time of War* (entered into force 21 October 1950), 75 UNTS 287; International Committee of the Red Cross, *Geneva Convention relative to the Treatment of Prisoners of War* (entered into force 21 October 1950), 75 UNTS 135.
[9] *Reparations for Injuries suffered in the Service of the United Nations*, Advisory Opinion, ICJ Reports 1949 179
[10] Rebecca Wallace, *International Law* (London: Sweet and Maxwell, 6th edition, 2009), 60

 [ISSN 2581-5369]

In any legal system, different actors will have different rights and duties and every entity will influence international law in a different way. Entities within international law now include States, Companies, International Organisations and Individuals, however not all of these entities will have legal personality as that requires participation and community acceptance. The latter of which is currently only granted to States when examining ICJ participation.

These entities are characterised as Non-state actors to portray that there are many entities outside of States at the international stage who influence the evolution of international law in one way or another, but are not States and cannot exercise the same rights as States. Belligerents and insurgents, while not having an international personality, have certain rights in international law, they can enter into agreements with national leaders, and are meant to follow International Humanitarian Law. They are similarly offered protections from other international entities by these rules.[11]

However, there are entities, such as the Palestinian Liberation Organisation (PLO) that received non-member observer[12] status in the United Nations General Assembly (UNGA) to represent their interests, however, not having been granted full membership, they do not have access to Article 93 which would allow them to approach the court. Not being a party to the ICJ Statute, Palestine cannot approach the ICJ for an contentious cases but rather has to rely on other methods to approach the court.

Apart from overseeing contentious cases, the ICJ also has the ability to issue Advisory Opinions when requested.[13] Only those organisations empowered by the UN Charter are allowed to ask the ICJ to provide an Advisory Opinion on a matter, and even then, these Advisory opinions are not legally binding.[14] As stated above, Palestine cannot bring cases to the ICJ, therefore it requested an Advisory Opinion from the ICJ via the UN General Assembly on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory.*[15]

UN Organs and specialised agencies also have the ability to request Advisory Opinions from the ICJ on matter that the court has jurisdiction over. Once again, advisory opinions are not binding and do not hold the same weight as a Decision from the ICJ. There currently exists no

[11] Petra Perisiae, 'Some Remarks on the International Legal Personality of Individuals' (2016) 49 (2) *The Comparative and International Law Journal* 223, 228.
[12] United Nations General Assembly, Resolution 3237 (22 November 1974) 2296th Plenary meeting; United Nations General Assembly, Resolution 43/177 (15 December 1988) 82nd Plenary meeting.
[13] United Nations, *Statute of the International Court of Justice*, 18 April 1946, Article 65.
[14]Charles F. Whitman 'Palestine's Statehood and Ability to Litigate in thew International Court of Justice' (2013) 44 (1) *California Western International Law Journal* 73, 90.
[15] Advisory Opinion Concerning the Legal Consequences of a Wall in the Occupied Palestinian Territory, International Court of Justice, 9 July 2004.

 [ISSN 2581-5369]

reason as to why the UN's own organs and agencies cannot approach the ICJ for contentious cases. Article 96 of the UN Charter already limits the ability of organs and agencies of the UN asking for Advisory Opinion by including the words "Legal questions arising within the scope of their activities", if this limit already exists, would it not be beneficial to allow its own international Organisations and Agencies to file contentious cases with the ICJ.[16]

Under the current Rules of Procedure for the ICJ, International and inter-governmental organisations can provide documents and make oral statements during proceedings if the Court so wishes, and these statements have proved to be of great assistance during court proceedings. Anotnio Cassesse[17] writes that it is unknown why this same procedure is not adopted during the hearing of contentious cases, albeit with some restraint.

If a question arises as to whether the ICJ has jurisdiction over a certain question of law, the ICJ is the deciding body.[18] As such, it would be within the realm of the ICJ exercising its own powers to review and accept or deny the grant of an advisory opinion by International organisations other than the ones empowered under Article 96(2) of the UN Charter, non-governmental organisations and international academic institutions have proven to be a positive influence as amici curae during other proceedings such as in *Tadić* (Interlocutory Decision).[19]

Advisory opinions are not legally binding, but merely the opinion of the court on a certain rule of law and as such, allowing entities other than States to request these opinions would not unfairly disadvantage States that have not given consent to the ICJ to rule over a particular matter, but would enable the 'World Court' to publicise the correct interpretation of the law, or the legality of an act.[20] These opinions do play an important role in advancing the understanding of international law and how it acts in the real world, and more understanding of the laws that govern international actions is hardly a negative.

As a final note, we can see that the United Nations Environment Programme (UNEP) does not have the same status as that of an Organ of the UN, thus it cannot even approach the court for an advisory opinion even in the worst possible situations of environmental degradation and collapse. This also leads most multi-lateral environmental agreements (MEA) to not have, in my opinion, any dispute resolution mechanism. Not only because countries might not consent to the treaty, but also because there's no permanent forum the UNEP can use. The ones that do

[16] Antonio Cassese, 'The International Court of Justice: It is High Time to Restyle the Respected Old Lady in Antonio Cassesse (ed) *Realizing Utopia: The Future of International Law* (Oxford Scholarship Online, 2012).
[17] Ibid.
[18] United Nations, *Statute of the International Court of Justice*, 18 April 1946,Article 36(6)
[19] *The Prosecutor v Tadic,* International Criminal Tribunal for the Former Yugoslavia (15 July 1999).
[20] Cassese, supra note 15.

 [ISSN 2581-5369]

have dispute resolution mechanisms, choose to let States decide how to solve these disputes.[21]

III. INDIVIDUALS AS INTERNATIONAL LEGAL PERSONALITIES

Individuals were originally only thought of as objects of International Law, because legal personality was granted to bodies with rights and duties, i.e. States. As Higgins puts it, people were no different than rivers and territories when spoken about at an international stage.[22] As people started to get more rights in international law, the way to protect these rights evolved rather precariously. Individuals could protect rights granted to them under international law, only if those rights were violated by another State, and only if their home State decided to bring a claim against the violating State. Further, the violation is thought of as a violation accruing against the claiming State, and not the individual.[23] Without a connection between the aggrieved individual and the State willing to take up their cause, such as for a Stateless person, the ICJ might as well not exist.

This idea that people are mere objects of international law seems to be illogical because the ultimate beneficiaries and subjects of all laws are the individuals living within the States, and not the inanimate personification of a State. This view also presents the negative outcome of subordinating individuals to States under International Law and might prevent the proper enforcement of many international laws, against the real subjects of those laws.[24] This brings to light the *Judgement in the Jurisdiction of the Courts of Danzig* where the Permanent Court of International Justice stated that treaties which compelled additions to national laws created binding obligations between States and their citizens, and not just between members of said treaty.[25]

Individuals are clearly important to the practice of international law in the 21st century, yet the ICJ has a historical hang-up of not affording individuals agency to initiate processes within its court, the court which calls itself the World Court, the only court with general jurisdiction in international law.

In contrast to this procedure, we see that Inter-governmental organisations give a more active

[21] United Nations Convention on the Law of the Sea (entered into force 16 November 1994), Article 287.
[22] Rosalyn Higgins, *Problems and Process: International Law and How We Use* It (Clarendon Press, 1995) page 46.
[23] Alexander Orakhelashvili, 'The Position of the Individual in International Law' (2001) 31 (2) *California Western International Law Journal*, 241, 247.
[24] George Manner, 'The Object Theory of the Individual in International Law' (1952) 46 (3) *The American Journal of International Law*, 428, 430-431.
[25] Jurisdiction of the Courts of Danzig, Advisory Opinion, 1928 PCIJ, 3 March 1928. <http://www.worldcourts.com/pcij/eng/decisions/1928.03.03_danzig.htm> para 54.

 [ISSN 2581-5369]

role to individuals. Both the European Court of Human Rights[26] (ECHR) and the African Court of Human and Peoples' Rights[27] allow individuals to directly approach the designated international court when any of their rights have been violated under the specific treaties signed by their respective member States. This procedure is not unlimited nor does it grant unconditional access to the court. An aggrieved party has to go through all available domestic procedure for remedy before they are able to approach the ECHR or other similar bodies for remedy. However tedious this process might be, it allows individuals more agency in international law and another forum to approach to protect their rights.

Many such cases have received international attention and have infact worked in the benefit of the individual. *Leyla Sahin v Turkey*[28] allowed an individual complainant an avenue to pursue her complaint in an impartial and fair forum even if the ruling was not favourable to the complainant. This choice motivates individuals to play a more active role in protecting their own rights. Contrasting this with the UNHRC's complaint procedure, where individual complaints are screened by members and if they pass examination, the complaint is sent to the State with a view of receiving a reply against the allegations. There is no transparency in this process, the communications are private and confidential, unlike court proceeding which are available to the public and can be used for precedential value if the need ever arises.

IV. WHY THE ICJ NEEDS TO EVOLVE

At the time of conception of the Permanent Court of Justice (PCIJ) in the 1920s, Leon Bourgeois stated the permanent court will not be one of arbitration, but one of justice governed by fixed law. While arbitration proceedings can take account of a thousand different facts and circumstances, but the court only focuses on the fundamental law and how it relates to life.[29]

Obviously this is not the whole truth as arbitration is also governed according to set procedures on the basis of law and the results are binding on the parties via their own consent to undertake the process. However, there are many differences between these two procedures that would make entities approach the court if given the option rather than enter arbitral proceedings or other methods of dispute resolution.

[26] Council of Europe, 'European Court of Human Rights: Questions and Answers' (Document from website) <https://www.echr.coe.int/documents/questions_answers_eng.pdf>

[27] African Court of Human Rights 'How to File a case' (Website) <https://www.african-court.org/wpafc/how-to-file-a-case/>

[28] Application no. 44774/98, Council of Europe: European Court of Human Rights, 10 November 2005; *SAS v France* [2014] ECHR 695.

[29] Permanent Court of Justice (PCIJ), Advisory Committee of Jurists, *Procès-verbaux of the Proceedings of the Committee* (1920) 8 – 10. <https://www.icj-cij.org/public/files/permanent-court-of-international-justice/serie_D/D_proceedings_of_committee_annexes_16june_24july_1920.pdf>

 [ISSN 2581-5369]

The ICJ has been a key element since its inception in an arrangement that promotes an organisational basis for the maintenance of peace, the resolution of disputes, and the evolution of legislation by consolidating the body of international law under one internationally recognised institution. It contributed to the introduction of rule of law into international relations and dispute settlement.[30]

This position in international law makes the ICJ seem to have the highest standing when compared to other forms of legal dispute resolution. A decision coming from the Judicial Organ of the United Nations would be much harder to reject or deny whether that be a State or a Multinational organisation.[31] Compliance with ICJ judgements can be seen as being 'quite good' with a compliance rate of around three-fourth of the total number of judgements, and the ICJ Statute points to recourse via the Security Council in cases of non-compliance.[32]

One of the missions assigned to the ICJ by the UN Charter and its Statute is the development of international law. This mission can hardly be achieved if it leaves almost all subjects of international law. In the past decade, non-governmental organisations have had a significant role in the development and evolution of international law by fostering treaties, lobbying for stronger international rules and assisting Intergovernmental organisations in their efforts to develop international rules and regulations. The Strategic Approach to International Chemical Management has a special voting which allows for organisations who have taken part in deliberations to vote on agenda matters, thereby increasing the authority of rulemaking outside the bounds of the State.[33]

With the proliferation of international law, Non-governmental Organisations (NGO) have been contributing to the development of international law and in most cases, their interventions in treaty and policy deliberations has led to positive change being implemented. An example of this can be seen as early as during the drafting of the UN Declaration of Human Rights where NGO intervention was instrumental in developing language for what would be universally accepted.[34] The International Committee of the Red Cross had championed a broader reading of the Fourth Geneva Convention thereby cementing rape as a crime under International

[30] Robert Kolb, *The International Court of Justice*, (Bloomsbury Publishing Plc, 2013), Page 1325.
[31] Michael Wood, 'Choosing Between Arbitration and a Permanent Court: Lessons from Inter-State Cases' (2017) 32 (1) *Foreign Investment Law Journal.*
[32] Joan E. Donoghue. "The Effectiveness of the International Court of Justice." *Proceedings of the Annual Meeting (American Society of International Law)* (2014) 18, 114, 115.
[33] United Nations Environment Programme, 'Multilateral Environmental Agreement: Negotiators Handbook' (University of Joensuu, 2nd Edition, 2007) 65.
[34] William Korey. 'NGO's and the Universal Declaration of Human Rights: A Curious Grapevine', (Palgrave Macmillan, 1998) 56.

 [ISSN 2581-5369]

Humanitarian Law.[35]

NGOs also act as amici curiae in international courts when allowed to do so. Most international courts, when required, allow NGOs to submit briefs and written submissions during the pendency of a case, however the ICJ is not one of these courts.[36] As stated above, this restriction comes from the idea that States would litigate against other States on behalf of their citizens, but this rarely happens and the pattern that emerges is States choosing to use the PCIJ and the ICJ for land and maritime boundary disputes.[37]

Unfortunately, States are not just responsible to their citizens, they have other issues to worry about when planning to litigate against other States. It may think obtaining evidence from within the territory of another State is too difficult, or impossible. It might decide that the litigation of a particular issue might cause further strife in the international relations between the 2 States. Whatever the reason may be, history shows that States are not always willing to go to the ICJ on behalf of their citizens.[38] Gambia filing a case against Myanmar[39] for its non-compliance with the Genocide convention marks the first time that a country has used its membership to litigate against another country, even without a direct connection to the crimes.[40]

Whereas most other international courts are evolving, the ICJ Rules of Procedure governing contentious cases has remained very static over the last century. The rules provide that the court *may* request information relevant to the case from public international organisations, which it describes as an international organisation of states.[41]

The first Advisory proceedings in the PCIJ in 1922,[42] they made clear that for just advisory opinions, international organisations also included non-governmental organisations. This action was thought to be a net benefit to the evolution of international law at the time. During the early days of the court, third party submissions in advisory opinions are dominated by trade unions and their representatives.[43]

---

[35] Theodor Meron 'Rape as a Crime Under International Humanitarian Law' (1993) 87 (3), *The American Journal of International Law* 424, 426.
[36] Dinah Shelton, 'The participation of Nongovernmental Organisations in international Judicial Proceedings', (1994) 88 (4) *The American Journal of International Law*, 611, 641
[37] Ibid at 613
[38] Ibid at 615
[39] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (The Gambia v. Myanmar) ICJ GL No 178 (Official Case No) ICGJ 540
[40] Human Rights Watch, '*Developments in Gambia's Case Against Myanmar at the International Court of justice: Questions and Answers'* (Website, 2022) <https://www.hrw.org/news/2022/02/14/developments-gambias-case-against-myanmar-international-court-justice#whydidgambia>
[41] Rules of the Court, International Court of Justice (entered into force 1 July 1978) Article 69(4).
[42] Designation of the Workers' Delegate for the Netherlands at the Third Session of the International Labour Conference, Advisory Opinion, 1922 PCIJ Para 41.
[43] Shelton supra Note 35, page 623.

 [ISSN 2581-5369]

Due to the nature of the language in the Statute, this openness to gather information from outside States is not extended to Contentious cases. The International League for Human Rights was only allowed to submit a written statement to the ICJ in regards to the legal questions asked by the General Assembly in the South West Africa advisory opinion.[44] When the International League for Human Rights asked for a similar right to submit oral or written statements in the *Asylum* case[45] they were rejected considering the difference in wording in the ICJ Statute governing contentious and advisory cases.

In my opinion this distinction no longer makes sense. The ICJ itself describes its role as being one to develop international law, however it chooses to leave out various entities that will be effected by the law, and those who can bring a broader understanding to the law. Somehow it accepts that the inputs of NGOs in dvisory cases is good for the development of international law, but at the same time rejects this notion on contentious cases that are supposed to be binding? If the ICJ wishes to hold onto its archaic notion that States are the only subjects of international law, then as more and more non-state entities emerge on the international stage, the ICJ will become a fringe dispute resolution body, regardless of its status as the Judicial Organ of the UN.

Furthermore, merely allowing non-state actors to be amici curiae also presents its own disadvantages. Amici are not given access to documents or other evidence in the case, they cannot offer more evidence than is requested, even if it pertains to the case, they cannot examine witnesses, nor do they have any ability to regain costs or receive any compensation regardless of the outcome of the case. For many, the disadvantages may be huge, but under current ICJ rules, it's the only way for organisations to participate, even minimally in international law.[46]

V. WHY ONE WOULD WANT TO APPROACH THE COURT

An entity would choose to go to the ICJ for a multitude of reasons. A significant guiding factors is that it is a very prestigious court, being the Judicial Organ of the United Nations. Having your case argued before it grants further legitimacy to ones problems and questions about law.

Dispute settlement is a monetarily intensive process, especially when it comes to negotiating against Economically prosperous countries or against Economically Prosperous multi-national organisations. A look at the Investor State Dispute Settlement (ISDS) system of dispute resolution will show that arbitration includes exorbitant costs, and many times just the threat of

[44] *International Status of South West Africa,* Advisory Opinion, 1950 ICJ 128 (July 1950) page 130
[45] Asylum Case (Colombia v. Peru), International Court of Justice [1950] ICJ Rep 266.
[46] Shelton supra Note 35, page 612

 [ISSN 2581-5369]

these costs is enough to coerce parties into submission.

In the *Fraport v Phillipines* case, the total cost incurred by the Philippines in defending their case against Fraport was a little over 11 million dollars[47] for a case that involved the domestic law of Philippines. Another such example when El Salvador was sued by Pacific Rim Cayman LLC because the Government of El Salvador rejected their proposal for a gold mine due to it not meeting their environmental standards. The proposal was rejected on the basis of domestic rules, and even though Pacific Rim had none of its rights violated, they initiated ISDS proceedings which cost El Salvador 12 million dollars in legal defence.

Worse still, when El Salvador chose to close down a Battery production factory because it was poisoning the locals, prosecute those responsible and hold them accountable for clean-up, the owners of said factory denied allegations and instead chose to threaten the government of El Salvador with an ISDS arbitral proceeding where they asked for 70 million dollars in compensation for damages.[48]

The average cost of defending litigation in an Investor State Dispute Settlement arbitration is roughly 5 million dollars which includes the cost of legal counsel and the arbitral tribunal. The average award given by these tribunals is roughly 76 million dollars.[49] With this knowledge, we see why even the threat of Arbitration can persuade countries to change course and reconsider their actions. ISDS rules assist investors protect their investments in foreign countries, and as such, it is more likely that such foreign investments take place in economically weaker countries, who might not be able to afford the cost of litigation, much less the burden of paying the award.

In contrast to these costs, the secretariat and the functioning of the ICJ is funded by the UN. As an example, the advisory opinion given by the court in the Chagos Arbitration was stated to cost anywhere between 450,000 and 600,000 dollars, which the ICJ received from the UN Budget, something the parties did not have to pay.[50]

VI. DOES THE ICJ STILL HAVE A PLACE IN INTERNATIONAL LAW

The ICJ is not perfect, it has its own host of issues starting from the composition of the court

[47] *Fraport AG Frankfurt Airport Services Worldwide v Republic of the Philippines* (ICSID Case No. ARB/03/25), para 522.

[48] Legal Notice from Oak Investment LP to State of El Slavador (Document, 2009), page 6 <https://www.documentcloud.org/documents/3031942-Baterias-Record-Notice-of-Intent.html>

[49] Lise Johnson and Lisa E. Sachs, 'The Outsized costs of Investor-State Dispute Settlement' (2016) 16 (1), *AIB Insights,* 10, 16.

[50] United Nations, *Report of the International Court of Justice 1August 2017 - 31 July 2018'* General Assembly Official Records, Seventy Third Session, para 21. https://www.icj-cij.org/public/files/annual-reports/2017-2018-en.pdf

being 15 members on a rotating basis who must be approved by the General Assembly and the Security Council. This has led to the 5 permanent members of the Security Council always having a member judge. ICJ judges enjoy security of tenure, having been appointed for a 9 year term, they have no official upper limit for retirement and cannot be removed without unanimous agreement from all other members of the court.

Data shows that judges, almost 90% of the time, vote in favour of the country that appointed them, whether they be ad hoc appointees or pre-existing members.

The ICJ's docket has been seen a consistent decline over the past few years. In its 60 year history, we can trace a pattern of the cases the ICJ does preside over. In the pre-cold war era, we see the ICJ flourishing with cases from international powerhouses like USA, France, Great Britain and Germany, both as applicants and defendants. In the latter half of the 20th century, there is a significant shift where these economically powerful countries were being continuously litigated against, by weaker courts. This trend might be a reason for the withdrawal of USA, France and China from Compulsory Jurisdiction of the Court.[51]

The ICJ could only flourish if States believed in its ability to be impartial and make sound decisions without bias. Unfortunately, countries often do not have the same faith in judges as one might have in domestic courts and believe that decision making in the ICJ is done on the basis of power blocs and not the best interest of international law.

Unfortunately international law is complex, and even if treaties and judgements are interpreted impartially, losing States will never be happy. A successful international court that depends on States to accede to its jurisdiction will have to make decisions while respecting the interests of States, but ensuring that their judgements are not governed by them.

At the end of the day the ICJ plays an important role in International law and its evolution, but with a dwindling docket it is hard to say whether they are having a significant impact on the subjects of international law. Without continuous discussions and deliberations, courts are unable to expand their influence and knowledgebase leading to stagnation. This is partly due to the proliferation of Arbitral Tribunals, but it is also partly due to the restrictive nature of who may go to the ICJ.

If the ICJ believes that its current ratio personae rules are sufficient for the efficient carrying out of international law, then its docket will continue to decline and there's nothing anyone can

[51] Eric A. Posner, The Decline of the International Court of Justice, (2004) *John M. Olin Program in Law and economics Working Paper No. 233.* at 8. <https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1499&context=law_and_economics>

 [ISSN 2581-5369]

do about it. An amendment to the Statute requires 2/3rd majority in the General Assembly which is not an easy task, but it would allow the ICJ to truly fulfil its prime role of being the Official Judicial organ of the UN.

*****

 [ISSN 2581-5369]