

The International Court of Justice: Evaluating Its Efficacy in Administering International Law and Justice

REYAA AGARWAL

October 02, 2024

The International Court of Justice (ICJ), the principal judicial organ of the United Nations, is one of the most influential bodies for administering international law and justice. This paper examines the Court's effectiveness in fulfilling this role, focusing on its past and recent rulings to assess its impact and influence in the international arena. The study begins with an overview of the ICJ's background, detailing its membership, composition, jurisdiction, and the significance of its location in The Hague. It then explores critical aspects of the Court's functioning, such as its optional jurisdiction, the challenges posed by its lack of enforcement mechanisms, its relationship with the United Nations Security Council (UNSC), and the political factors that affect its decisions. The paper also addresses the Court's stance on critical issues such as Palestine and the India-Pakistan spy case, concluding with recommendations for improving the ICJ's role in international law and justice.



INTRODUCTION

The International Court of Justice, also known as the World Court ((hereafter, 'ICJ'), is widely called the 'principal judicial organ' of the United Nations. A successor of the Permanent Court of International Justice, the ICJ started functioning as the sole International Court of the UN on April 18, 1946 and has since fostered an integral relationship with the UN.¹ Article 1 of the Statute of the ICJ states that the UN Charter establishes the Court and reaffirms the link and integrated relationship between the ICJ and the UN.²

Because the ICJ is the principal judicial organ of the United Nations, it is expected to be an immaculate and efficient agent of international law- the court banks upon general international regulations in force between all states during its proceedings and while delivering judgements. Not only does it follow the principles and purposes of the UN as per Art.1 and 2 of the Statute of ICJ, but it is bound to give decisions "in accordance with international law."³

Several cases adjudicated by the ICJ have brought it to the limelight, and the judgements delivered have had a significant impact on framing the application of international law. The judgement on the recent Kulbhushan Jadhav case was a landmark victory for India and had a notable effect on international law. The ICJ held Pakistan guilty of violating the Vienna Convention on Diplomatic Relations and was directed to provide consular access to Kulbhushan Jadhav, reaffirming consular access as a fundamental right under the Vienna Convention.⁴ Another landmark ruling which highlighted the ICJ's role in interpreting international law was the case for the prevention of the genocide of Rohingya Muslims in Myanmar, brought to the Court by the African nation of Gambia on behalf of 57 members of the Organization of Islamic Cooperation.⁵ The Court issued an order directing Myanmar to "take all measures within its power" to prevent the genocide of Rohingya Muslims, opining that they "remain extremely vulnerable".⁶ The infamous Gaza Strip case, in which South Africa initiated proceedings against Israel's genocide of Palestinians in the Gaza Strip, significantly brought the ICJ to the spotlight, underlining its role in solving international disputes and promoting justice.⁷

In light of recent cases and the ICJ's growing impact on framing the application of international law, ensuring that it is an efficient administrator of international law and an enabler of justice is crucial. It is vital to check its powers, guaranteeing transparency, proficiency and impartiality in its role as the 'principal judicial organ'. This paper aims to critically assess the effectiveness of the International Court of Justice (ICJ) in administering international law and delivering justice. By analyzing recent rulings, the paper aims to evaluate the Court's influence on global legal governance

¹ "International Court of Justice: History", *International Court of Justice* <<https://www.icj-cij.org/history>>

² Statute of the International Court of Justice, Art. 1.

³ Singh, N., "The Role and Record of the International Court of Justice," 1989, p.43.

⁴ "Kulbhushan Jadhav case: Pakistan has blocked all avenues for effective remedy, says MEA," *Indian Express*, July 24, 2020. <<https://indianexpress.com/article/india/kulbhushan-jadhav-case-pakistan-legal-remedy-icj-india-6520417/>>

⁵ "ICJ – The Gambia v. Myanmar", *United Nations*, Available at <<https://imm.un.org/icj-the-gambia-v-myanmar/>>

⁶ "ICJ orders Myanmar to prevent Rohingya genocide," *Indian Express*, January 23, 2020. <<https://indianexpress.com/article/world/icj-rules-it-has-the-right-to-probe-allegations-of-genocide-against-rohingya-muslims-in-myanmar-6231557/>>

⁷ "ICJ updates: Court orders Israel to prevent acts of genocide in Gaza," *Al Jazeera*, January 23, 2020. <<https://www.aljazeera.com/news/liveblog/2024/1/26/live-icj-to-issue-preliminary-ruling-in-south-africa-genocide-case-against-i>>

and its ability to address complex international disputes. It further explores key challenges the ICJ faces, such as its optional jurisdiction, lack of enforcement mechanisms, and the political considerations affecting its decisions. The paper seeks to illustrate the Court's real-world impact through case studies and provide recommendations for improving its function in the international system.

INTERNATIONAL COURT OF JUSTICE: A BACKGROUNDER

The successor of the Permanent Court of International Justice. The International Court of Justice is the successor of the Permanent Court of International Justice (hereon referred to as PCIJ), which functioned effectively between 1922 and 1940. It was the first institutional international tribunal from which ad hoc tribunals could be constituted, and states from all parts of the world could submit their conflicts for judicial settlement.⁸ However, after the Second World War and the signing of the UN Charter, there were deliberations about retaining the PCIJ with modifications to its statute or creating an entirely new world court of justice. Connecting the PCIJ to the League of Nations' failures and the consequent unwillingness of several states to join the Court, the PCIJ was decided to be dissolved, and a new court of justice was to be established as per the old Statute of the PCIJ. Hence, it became the International Court of Justice, unconnected to the abolished League of Nations, and had an organic relationship with the United Nations.

Membership. The new Court, which started functioning on April 18, 1946, quickly fostered an integral relationship with the United Nations, being its 'principal judicial organ'. For instance, contrary to the process of membership in the PCIJ, in the ICJ, all members of the UN are automatically parties to the Statute of the ICJ.⁹ As per Article 93/1 of the UN Charter, a member state is *ipso facto* a party to the Statute of the ICJ because it is a member of the UN, not requiring any further ratification of the Court's Statute. Moreover, as stated by Art. 92 of the UN Charter,¹⁰ being the judicial organ of the UN, the Statute of the ICJ is an integral part of the Charter. This demonstrates that the ICJ is the highest judicial Court in the world, holding immense power over all the states to settle disputes arising between them.

Composition. The ICJ comprises 15 judges with a tenure of 9 years, and five judges are nominated every three years. This resembles the election process of members of the Rajya Sabha, the upper house of the Indian Parliament. The members do not represent their governments but are independent magistrates and can only be one judge of a particular nationality.¹¹ The Permanent Court of Arbitration national groups nominate a list of potential judges. Subsequently, simultaneous but independent elections¹² take place in the United Nations Security Council (hereon referred to as the 'UNSC') and the United Nations General Assembly (hereon referred to as the 'UNGA'). The candidates who obtain an absolute majority of votes in the UNSC and UNGA are elected as judges of the ICJ.¹³ In light of the power held by the judges of the ICJ to adjudicate international disputes between states, it is essential to ensure a transparent election and the

⁸ Mohamed Sameh Ahmed Mohamed, 'The Role of The International Court of Justice as The Principal Judicial Organ Of The United Nations', (Thesis), *London School of Economics and Political Science, University of London*, 1997. <<https://etheses.lse.ac.uk/2566/1/U615515.pdf>>

⁹ *ibid*, p. 26.

¹⁰ United Nations Charter, Art 92.

¹¹ Statute of the International Court of Justice, Art 3.

¹² Statute of the International Court of Justice, Art 8.

¹³ Statute of the International Court of Justice, Art 10.

impartiality of the elected judges. While the judges are elected on the basis of their qualifications and expertise, it could be argued that Western countries dominate the composition of ICJ and lack sufficient representation from the third world and developing countries.¹⁴ This also questions the judges' impartiality, raising concerns that the ICJ's decisions only cater to a narrow group's interests rather than the whole international community.

Jurisdiction. The ICJ's jurisdiction is two-fold – contentious and advisory.¹⁵ Under contentious jurisdiction, disputes of a legal nature submitted by states in accordance with international law are settled. The states party to the conflict have to submit to the jurisdiction of the Court, and the judgement is binding on them. On the other hand, under advisory jurisdiction, the Court provides advisory opinions on legal questions at the request of any organs of the United Nations or other specialized agencies. It is merely an advisory legal opinion and is not binding on the states. If a non-legal question is brought to the ICJ by an organization for an advisory opinion, the Court lacks jurisdiction over that matter and is bound to refuse to provide an opinion on the same.

The main provisions governing the Court's advisory function appear in Art. 96 of the UN Charter¹⁶ and in Art. 65 of the ICJ Statute.¹⁷ While it has been accepted that the Court has some role to play in the development of international law, there has been an ongoing debate about whether it is allowed to make or develop the law.¹⁸ Shedding light on the nuances of the law and the ICJ's role in developing and enacting the law, Sir Robert Jennings stated that "the primary task of a court of justice is not to "develop" the law, but to dispose, in accordance with the law, of that particular dispute between the particular parties before it. This is not to say that development is not frequently a secondary part of the judge's task."¹⁹

For instance, let's see the two nuclear test cases (Australia v. France²⁰; New Zealand v. France²¹) initiated in the ICJ in 1973 due to the several atmospheric Nuclear Weapons Tests conducted in the South Pacific region by France, in violation of the Nuclear Test Ban Treaty, 1963. In these cases, the Court passed two orders advising France to avoid conducting such nuclear tests but decided not to give any further decisions. If France had consented to the jurisdiction of the ICJ, a binding further judgment could have been delivered by the Court.²² The decision has been heavily criticized because the Court had an opportunity to set a standard for international law on such arbitrary and indiscriminate nuclear testing. Still, it chose to refrain from doing so. However, the ICJ did have the opportunity to "develop" the law in this case.

¹⁴ Adv. Sanjay Sarraf, 'Enforcing International Law: An Analysis of ICJ Decisions', *International Journal of Creative Research Thoughts*, 2023, p. d430. Available at, <<https://www.ijcrt.org/papers/IJCRT2304409.pdf?fbclid=IwAR2uj6LQXONXpPEgN-LxZSvw2e-IQgiWjxtDzhMEdC3Zr7AqW-HPnwnngOs>>

¹⁵ "International Court of Justice: Jurisdiction," *International Court of Justice* <<https://www.icj-cij.org/jurisdiction>>

¹⁶ United Nations Charter, Art 96.

¹⁷ Statute of the International Court of Justice, Art 65.

¹⁸ Teresa F. Mayr, Jelka Mayr-Singer, 'Keep the Wheels Spinning: The Contributions of Advisory Opinions of the International Court of Justice to the Development of International Law', (2016) *ZAOERV*, p. 431. Available at <https://www.zaoerv.de/76_2016/76_2016_2_a_425_450.pdf>

¹⁹ R. Y. Jennings, 'The Role of the International Court of Justice', *BYIL* (1998), page 41.

²⁰ Australia v. France, ICJ Rep 1974, 253

²¹ New Zealand v. France, ICJ Rep 1974, 457

²² Ritwik Tyagi, 'Case Comment: Nuclear Test Cases [1974] I.C.J.', 2019. Available at <<https://medium.com/legal-jumble/case-comment-nuclear-test-cases-1974-i-c-j-e53dab>>

Another case where the ICJ contributed to the development of international law was in the Corfu Channel case. The ICJ recognizes the freedom of navigation in international waters, which has since become a widely accepted norm of international law.²³ Another landmark advisory opinion that the ICJ delivered was regarding the Israel wall matter in 2004, declaring that the construction of a security barrier around Palestinian territories and East Jerusalem violated international law.²⁴

Enforcement. The ICJ does not possess any enforcement powers. However, suppose a state fails to comply with a judgement incumbent upon it via the contentious jurisdiction of the Court. In that case, the UNSC has the power to act as it is primarily responsible for maintaining peace and security. Article 27 of the UN Charter empowers the UNSC to enforce the rulings of the ICJ, authorizing the power of the permanent members of the UNSC. This implies that the only enforcement mechanism of ICJ's verdicts is through the UNSC, whose permanent members can arbitrarily and unilaterally veto a decision.

Location: Why Hague? The seat of the International Court of Justice is in The Hague, Netherlands. It is the only principal organ of the United Nations that doesn't have its headquarters in New York, which calls into question the rationale behind selecting the Hague as its seat. The ICJ adopted everything from the PCIJ, which used to sit in the same Peace Palace in the Hague, Netherlands. This became the seat of the PCIJ after Russian Tsar Nicholas II invited several states for an international conference in 1899 on peace and disarmament in The Hague. Its global peace and justice history dates to 1625 when Hugo de Groot, the founder of international law, wrote *The Law of War and Peace*.²⁵ This venue was chosen for the Peace Conference. Subsequently, the PCIJ and ICJ because the Netherlands had the right profile- it had produced Dutch humanists and jurists like Erasmus, Grotius and Bynckershoek, had previously been a good host city for the 1893 and 1894 conferences of the Inter-Parliamentary Union and the Hague Conference on Private International Law and used to hold a relatively neutral view on European conflicts.²⁶ The relations of the Dutch royal family with the Russian monarchy also played a role in the choice of venue. Today, the Hague is home to 160 International Organizations and a hub of peace and justice. Hence, it only makes sense for the highest judicial organ, promoting peace in accordance with international law, to be situated in the peace capital.

CRITICAL ASSESSMENT OF THE INTERNATIONAL COURT OF JUSTICE

The scope of international law is no longer just the European Union and the United States. In today's day and age, many more states have come into the picture. Not just states but now even international organizations, courts, and non-governmental organizations are actively contributing to the framing and using public international law. Moreover, the institutional mechanisms for

²³ Sarraf, *op.cit.* p. d436.

²⁴ "The World Court is in Session: Here's What to Know," *Better World Campaign*, 2024.

<<https://betterworldcampaign.org/blog/understanding-international-court-of-justice>>

²⁵ "A history of the First Hague Peace Conference," *Just Peace* <<https://justpeacethehague.com/en/story/a-history-of-the-first-hague-peace-conference>>

²⁶ Rens Steenhard, "Building a 'Temple for Peace': the 1899 Hague Peace Conference," 2013.

<<https://peacepalacelibrary.nl/blog/2013/building-temple-peace-1899-hague-peace-conference>>

tackling dispute resolutions are no longer limited to courts.²⁷ Alternate dispute resolution methods like arbitration and mediation are now taking over these traditional dispute resolution mechanisms.

The International Court of Justice has been recognized as a reputed international court and interpreter of international law for decades. However, recently, there have been some questions and criticisms around the effectiveness of the ICJ as an interpreter of public international law.

Optional Jurisdiction, Issues with Admissibility and Lack of Prompt Decisions

To adjudicate a case, a court must have jurisdiction over the case, and it should be admissible in that Court. Jurisdiction precedes admissibility. As stated earlier, the ICJ has two types of jurisdictions- contentious and advisory. Contentious jurisdiction depends primarily on the consent of the parties to the dispute to accept the Court's decision as legally binding, and it is solely upon the states to agree or refuse to accept it. In such a situation, most respondent states would refuse to submit to the Court's contentious jurisdiction so that its decision is not legally binding on them. Hence, in the case of advisory jurisdiction, it is *de facto* optional for states to enforce the Court's judgement. This brings into question the effectiveness of the ICJ's jurisdiction and judgements.

The ICJ faces challenges regarding the admissibility of cases as well. To raise issues with admissibility, the respondent state must have consented to the Court's jurisdiction *ab initio* but objects to the hearing of the dispute in the ICJ based on some other grounds. The Court may uphold the objection, in which case, that matter gets terminated permanently in the ICJ. It may pass 'curative orders', i.e., the matter shall remain suspended until the defect is solved.²⁸ However, if the Court rejects the objection, the matter will continue for hearing. However, this is another tedious process that questions the ability of the Court to admit and hear matters. This also means the disputes go on longer than an expedited hearing and solution.

For instance, in 2019, Gambia filed a case against Myanmar to the ICJ under the International Genocide Convention, alleging that Myanmar's military committed acts of genocide against the Rohingya population in Myanmar.²⁹ Myanmar raised four objections, challenging the Court's jurisdiction in the case. The ICJ in 2022 rejected Myanmar's objections and proceeded to hear the case on its merits.³⁰ The ICJ delivered its decision three years after the Gambia filed the case, and now the case will go on for several years in the ICJ, with no relief for Rohingya Muslims in Myanmar. This shows the ineffectiveness of the Court to take prompt decisions in case of urgent disputes, impacting thousands of lives.

²⁷ Joan E. Donoghue, "The Role Of The World Court Today," *School of Law, University of Georgia*, 2012, p.190 <https://digitalcommons.law.uga.edu/lectures_pre_arch_lectures_sibley/82/>

²⁸ S. Gozie Ogbodo, "An Overview of the Challenges Facing the International Court of Justice in the 21st Century" *Annual Survey of International & Comparative Law*, p. 98. Available at, <<https://digitalcommons.law.ggu.edu/cgi/viewcontent.cgi?article=1159&context=annlsurvey>>

²⁹ "The Republic of The Gambia institutes proceedings against the Republic of the Union of Myanmar and asks the Court to indicate provisional measures," *Press Release by International Court of Justice*, 2019. Available at, <<https://www.icj-cij.org/sites/default/files/case-related/178/178-20191111-PRE-01-00-EN.pdf>>

³⁰ "Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)," *Press Release by International Court of Justice*, 2022. Available at, <<https://www.icj-cij.org/sites/default/files/case-related/178/178-20220722-SUM-01-00-EN.pdf>>

Lack of Enforcement Mechanisms

One of the major challenges to ICJ's authority is the lack of enforcement mechanisms. The ICJ's advisory decisions are not binding on the states and cannot be enforced. The ICJ ruling on contentious issues is final and binding, but there are no direct or efficient ways to enforce it. While domestic courts and regional organizations enforce ICJ decisions by incorporating international law into domestic law or through regional agreements and mechanisms, this remains an unsatisfactory method of enforcement since it is voluntary and, hence, mostly overlooked.³¹ The non-compliance of ICJ decisions by the states raises questions about the legitimacy and authority of the ICJ, questioning its ability to resolve disputes between states and effectively implement international law.

Veto Power of Permanent Members of the Security Council

The only method of enforcing ICJ decisions is via the UN's organ, the United Nations Security Council, which is authorized by VII of the UN charter to enforce the ICJ's decisions, even by force, if required.³² This is an inefficient method since political considerations impact it due to the **veto powers** held by the permanent members of the UNSC. This was the convenient recourse taken by the United States of America in 1948 when a case was brought against it by Nicaragua,³³ demanding reparations for the US support for contra rebels. The ICJ ruled in Nicaragua's favor, but the US refused to accept the decision and thus vetoed the resolution in the UNSC. This way, a decision taken by the ICJ against any of the permanent members or their allies can never be enforced. This raises the concern of bias again, questioning whether there is an actual separation of powers between the ICJ and UNSC and casting aspersion on the supposed impartiality of the judges and the ICJ by large.

Politically Inspired Decisions

Another challenge that raises doubts about the ICJ's effectiveness is the political considerations in delivering judgements. Like most major organizations, the World Court is not free from allegations and doubts about playing politics. For instance, in the previously mentioned nuclear test cases (Australia v. France; New Zealand v. France), the ICJ used the principle of good faith to justify its position and refused to make further decisions. This was perhaps because France was a superpower at the time and one of the largest users of the Court. The importance of the case in the international sphere and in terms of setting precedence was evident to the whole world, and the ICJ refused to pass judgment against France, showing its bias towards the superpowers at the cost of the smaller nations.

Advisory Opinion Issued on the Palestine Question and its Impact on the International Community

In 2002, in furtherance of its annexation policies, Israel constructed a "security fence" in and around East Jerusalem, basically amounting to a *de facto* annexation of Palestinian territory.³⁴ For

³¹ Sarraf, *op.cit.*, p. d434.

³² United Nations Charter, Chapter VII.

³³ Nicaragua v. United States of America, I.C.J. 1986, 14.

³⁴ "Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory" *International Court of Justice*, Available at, <<https://www.icj->

this purpose, UNGA, via a resolution in 2003, sought an advisory opinion from the International Court of Justice on the legality of the wall's construction. The ICJ in 2004 opined that the construction of the wall violated International Humanitarian Law and International Human Rights law, advising Israel to immediately cease the construction and dismantle all structures in the Palestinian territory.³⁵ Despite this advisory opinion and several UNGA resolutions, Israel is exercising control over the Gaza Strip and continuing to violate the human rights of several groups in Palestine.³⁶

In November 2022, another advisory opinion was requested from the ICJ pursuant to Article 65 of the ICJ Statute on Israel's occupation of Gaza and the whole Palestine question. Moreover, in December 2023, South Africa initiated proceedings against Israel in the Court, alleging Israel of violating its obligations under the Genocide Convention in relation to the Palestinians in the Gaza Strip.³⁷ South Africa found the Court's jurisdiction in Article 36, paragraph 1 of the ICJ Statute, requesting it to issue "provisional measures" under Article 41 of the Statute to prevent any further harm to the rights of Palestinians by acts of genocide by Israel in the Gaza strip.

The ICJ, by its order of January 26, 2024, ordered "provisional measures", stating that Israel is violating the Genocide Convention. These measures included *inter alia* preventing genocide in the Gaza Strip, providing humanitarian assistance to Palestinians and punishing incitement to commit genocide. Shedding light on the vulnerable population of Palestine and the tens of thousands who have died since Israel's occupation of the West Bank, the unsanitary and overcrowding conditions in UNRWA shelters and the heartbreaking plight of children,³⁸ the ICJ calls for immediate and effective measures to prevent genocide and provide basic services to address the adverse conditions in which the people of Gaza are living.

This was not a binding order since Israel has not consented to the Court's jurisdiction, so it is just an advisory opinion and not binding on the parties. Moreover, in a situation where the Court could have ordered a ceasefire, it chose to order provisional measures despite the gravity of the situation and the continued occupation of Gaza by Israel. However, the international community sees it as a "sweeping stance" taken by the world's highest Court on the conflicted topic of the Palestine issue.³⁹ A South African foreign ministry statement called it "a decisive victory for the international rule of law and a significant milestone in the search for justice for the Palestinian people".⁴⁰

[cij.org/case/131#:~:text=The%20Court%20stated%20that%20Israel,ineffective%20all%20legislative%20and%20regulatory](https://www.icj-cij.org/case/131#:~:text=The%20Court%20stated%20that%20Israel,ineffective%20all%20legislative%20and%20regulatory)

³⁵ *ibid.*

³⁶ Saadia Abbasi, "The ICJ's Upcoming Advisory Opinion on Palestine: A Fragile Hope," *Research Society of International Law*, 2023. Available at, <<https://rsilpak.org/2023/the-icjs-upcoming-advisory-opinion-on-palestine-a-fragile-hope/>>

³⁷ "The Republic of South Africa institutes proceedings against the State of Israel and requests the Court to indicate provisional measures", *Press Release by International Court of Justice*, 2023. Available at, <<https://www.icj-cij.org/sites/default/files/case-related/192/192-20231229-pre-01-00-en.pdf>>

³⁸ "Application Of The Convention On The Prevention And Punishment of The Crime Of Genocide In The Gaza Strip," *Order by International Court of Justice*, 2024. P. 16-17. <<https://www.icj-cij.org/sites/default/files/case-related/192/192-20240126-ord-01-00-en.pdf>>

³⁹ "World court: Israel occupation of West Bank, east Jerusalem illegal," *Times of India*, July 20, 2024. Available at <<https://timesofindia.indiatimes.com/world/rest-of-world/world-court-israel-occupation-of-west-bank-east-jerusalem-illegal/articleshow/111875018.cms>>

⁴⁰ "UN court orders Israel to ensure acts of genocide are not committed in Gaza," *The Guardian*, January 26, 2024. Available at <<https://www.theguardian.com/world/2024/jan/26/un-court-orders-israel-to-ensure-acts-of-genocide-are-not-committed-in-gaza>>

Palestinian authorities were happy with the Court's decision, calling it a "watershed moment for Palestine".⁴¹

Although the Court's opinion carries legal weight and authority, it is unlikely to affect Israeli policies. If the 2004 advisory by the ICJ and several UNGA resolutions couldn't impact Israel's policies and actions, another advisory won't do any good either. Moreover, since UNGA raised the initial request for an advisory opinion, the question will return to the Assembly. It doesn't have the power to take any rigorous or security actions without the UNSC stepping in, so this decision will have minimal *de facto* impact.

Let's look at it from a realistic point of view. This decision still doesn't help Palestine because it was merely an advisory issued by the Court and cannot be enforced by anyone apart from the UNSC, which has room for veto by the permanent members. A senior Hamas official said that Israel must be forced to implement the ICJ's decision since its decisions are not binding on Israel.⁴²

However, this decision might contribute to isolating Israel from the international sphere, putting pressure on it to suspend its operations and dismantle the constructions. With South Africa's genocide case against Israel also in the picture, Israel runs in the same leagues as Rwanda and Nazi Germany. Suppose Israel chooses to disregard yet another advisory opinion issued by the ICJ and disrespect any UNGA resolutions. In that case, Israel might be ostracized by the international community, hoping for Israel's withdrawal of its annexation policies. There have been several mentions and references to the apartheid abolition in South Africa due to its isolation and *pariah* treatment in the world community. We can only hope that the same happens in Israel.

Kulbhushan Jadhav Decision and Impact on International Law

The judgement delivered by the International Court of Justice (ICJ) in the Kulbhushan Jadhav case was a landmark victory for India, reaffirming its position in the international community. In July 2017, the ICJ ruled in India's favor, which bolstered India's standing globally, as it successfully secured a decision from the World Court.⁴³

India filed a case against Pakistan in May 2017, alleging violations of Pakistan's obligations under the 1963 Vienna Convention on Consular Relations. Kulbhushan Sudhir Jadhav, an Indian national and retired Navy officer, had been detained and tried by a military court in Pakistan, which sentenced him to death in 2017. India argued that Pakistan had failed to inform it of Jadhav's arrest and detention promptly and had also failed to notify Jadhav of his rights under Article 36, paragraph (b) of the Vienna Convention.⁴⁴ Additionally, India claimed that its consular officers had been denied access to Jadhav, preventing them from providing legal representation and communication during his imprisonment.⁴⁵

Pakistan raised three objections, alleging that India had abused the process, violated rights, and engaged in unlawful conduct. However, in its July 2017 judgement, the ICJ rejected Pakistan's

⁴¹ "Can Palestinians expect changes after ICJ ruling on Israel's occupation?," *Al Jazeera*, July 22, 2024. Available at, <<https://www.aljazeera.com/news/2024/7/22/can-palestinians-expect-changes-after-icj-ruling-on-israels-occupation>>

⁴² Guardian n(42).

⁴³ "Statement on ICJ verdict on the Jadhav case," *Press Release, Ministry of External Affairs, New Delhi*, 17 July 2019.

⁴⁴ Vienna Convention on Consular Relations, 1963, art 36.

⁴⁵ India v. Pakistan (2017) ICJ GL No 168.

objections and deemed the case admissible. The Court found that Pakistan had breached its obligations under the Vienna Convention by failing to notify Jadhav of his rights, delaying notification of his arrest to India, and denying India consular access.⁴⁶ The ICJ ruled that Pakistan must review and reconsider Jadhav's death sentence.

The ICJ had previously addressed similar issues in the 2001 *Germany v. United States of America* case, where it declared that the right to consular access under Article 36 of the Vienna Convention is an inalienable right for individuals detained in a foreign country.⁴⁷ Despite this precedent, Pakistan argued that the Convention did not apply to Jadhav due to espionage charges. However, the ICJ reaffirmed that consular access must be granted regardless of the charges, underscoring that this right cannot be arbitrarily denied.

This ruling had significant diplomatic and legal implications. It marked a victory for India in its dispute with Pakistan and reinforced the importance of consular access in international law. The judgement demonstrated that even in sensitive matters such as national security, the ICJ holds the authority to interpret and enforce international legal obligations. This strengthened the Court's credibility and standing in the international legal system. The decision may bring attention to the human rights of prisoners entangled in disputes between India and Pakistan, who are frequently the target of rivalry and jingoism.⁴⁸

Although the decision did not bind Pakistan to release Jadhav or overturn his conviction and death sentence, it did carry substantial legal and diplomatic weight. By limiting its jurisdiction to issues under the Vienna Convention, the ICJ highlighted its inability to directly adjudicate on Jadhav's sentence, exposing the Court's limitations in resolving complex bilateral disputes. This raises questions about the ICJ's overall efficiency as an administrator of international law.

The broader implications of this case are worth noting. The ICJ's decision, though not enforceable, helped shape global perceptions of justice and legality, much like its ruling that Russia's invasion of Ukraine was unlawful. Though the ICJ could not compel compliance due to Russia's status as a permanent member of the UN Security Council, its judgement influenced international opinion. It contributed to the robust global support (financial and military) Ukraine received from different Western countries.⁴⁹

However, in a situation where the Court could have ordered an acquittal of Jadhav and quashed his conviction and death sentence, it refrained from doing so. It did not order a release as India sought, limiting its jurisdiction to the Vienna Convention issues. This highlights that adjudicating the death sentence was outside the purview of the ICJ, highlighting its limits in resolving bilateral disputes. While the ICJ's ruling in the Kulbhushan Jadhav case was a diplomatic success for India and reaffirmed vital principles of international law, it also revealed the Court's limitations in

⁴⁶ Jadhav case (*India v. Pakistan*), *Press Release by International Court of Justice*, 2019. Available at <<https://www.icj-cij.org/sites/default/files/case-related/168/168-20190717-PRE-01-00-EN.pdf>>

⁴⁷ *Germany v. United States* (2001) ICJ Rep 466.

⁴⁸ Christopher Finnigan, 'The triumph of international law: Why India and Pakistan must have a comprehensive charter of rights for prisoners', *London School of Economics Blog*, 2019. Available at, <<https://blogs.lse.ac.uk/southasia/2019/08/22/the-triumph-of-international-law-why-india-and-pakistan-must-have-a-comprehensive-charter-of-rights-for-prisoners/>>

⁴⁹ Mariano-Florentino (Tino) Cuéllar and Oona A. Hathaway, "The International Court of Justice's Balancing Act," *Carnegie Endowment*, 2024. Available at <https://carnegieendowment.org/posts/2024/01/the-international-court-of-justices-balancing-act?lang=en>

resolving disputes concerning national security. This leaves the question of whether the ICJ can serve as an effective enforcer of international legal standards.

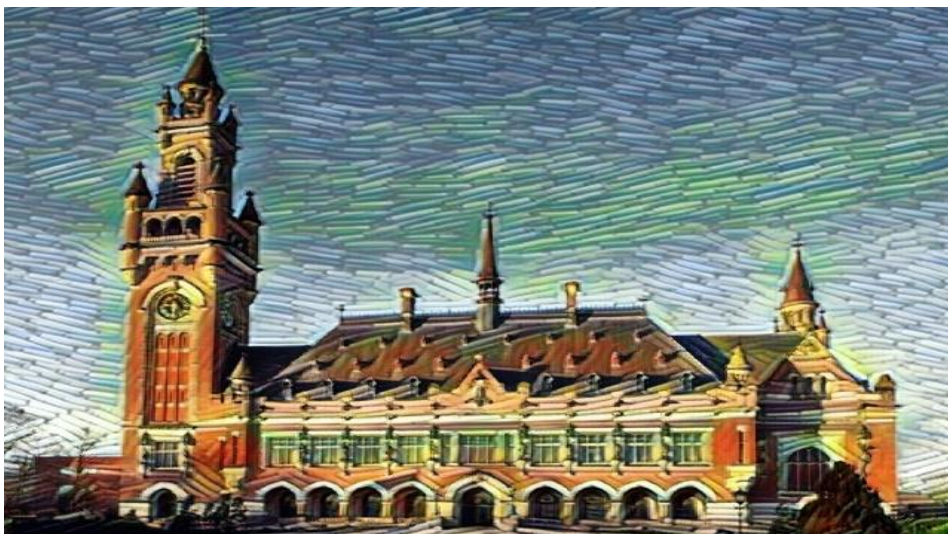
CONCLUSIONS

Analyzing the International Court of Justice's (ICJ) background, composition, jurisdiction, and enforcement mechanisms reveals an urgent need for reform, particularly in enforcing its decisions. The ICJ's judgments often fall short of administering justice effectively due to the lack of binding enforcement mechanisms, the non-binding nature of its decisions, and the reluctance of powerful states to comply. As a court meant to provide legal recourse for states wronged by more powerful nations, its rulings frequently become little more than recommendations, leading to instances of injustice.

To address this, more effective measures must be implemented to ensure compliance with ICJ rulings and strengthen the Court's ability to administer justice on the global stage. The involvement of third-party actors, such as the United Nations or regional organizations, could play a significant role in ensuring that states comply with ICJ decisions. Additionally, non-compliant states should face reputational consequences in international forums, creating stronger incentives for adherence.

Moreover, a more robust framework is required to expand the Court's compulsory jurisdiction, preventing states from selectively choosing which cases they submit to the Court. Without such reforms, the effectiveness of the ICJ in delivering international legal justice will remain limited. Allowing states to opt out of being bound by the Court's decisions undermines the very purpose of a judicial process, reducing its judgments to mere advisory opinions that can be easily ignored. Therefore, it is essential to expand the scope of the ICJ's compulsory jurisdiction and make its decisions binding.

The ICJ's position in the international legal system could be significantly strengthened by addressing these challenges. This would enhance the Court's authority and effectiveness, promoting greater respect for its rulings and fostering a more just international legal order.



REYAA AGARWAL (Research Intern, Society for the Study of Peace and Conflict, June-July 2024). She is pursuing her law degree at O.P. Jindal Global University, Sonapat, Haryana. She is dedicated and passionate about international law, conflict resolution, and child rights. Reyaa has previously interned at esteemed organizations like the Centre for Study and Research on Consumer Law (CSRCL), NUJS and Child Rights and You (CRY). She is committed to impactful research and policy development in Conflict, Security, and Human Rights.

The views expressed in this article are personal.

The Society for the Study of Peace and Conflict (SSPC) is an independent, non-profit, nonpartisan research organization based in New Delhi, dedicated to conduct rigorous and comprehensive research and work towards disseminating information through commentaries and analyses on a broad spectrum of issues relating to peace, conflict and human development. SSPC has been registered under the Societies Registration Act (XXI) of 1860. The SSPC came into being as a platform to exchange ideas, undertake quality research, and ensure a fruitful dialogue.

Copyright © *Society for the Study of Peace and Conflict, New Delhi*

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without obtaining written permission from the copyright owner.

Published by:

Society for the Study of Peace and Conflict.
Post Box: 10560,
JNU Old Campus, New Delhi-110067.
Website: <https://sspconline.org>
<https://x.com/sspconline>
<https://in.linkedin.com/company/sspconline>
<https://www.facebook.com/sspconline>

We welcome your feedback. Email your comments at "sspconline@gmail.com"

Designed and typeset by Excel Solutions